

**INVESTIGATION OF WHITEWATER  
DEVELOPMENT CORPORATION  
AND RELATED MATTERS**

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**SPECIAL COMMITTEE TO INVESTIGATE  
WHITEWATER DEVELOPMENT CORPORATION  
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON  
BANKING, HOUSING, AND URBAN AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED FOURTH CONGRESS**

SECOND SESSION

**VOLUME XVIII**

ON

**THE INQUIRY INTO WHETHER IMPROPER CONDUCT  
OCCURRED WITH RESPECT TO THE OPERATION,  
INVESTMENTS, AND ACTIVITIES OF WHITEWATER  
DEVELOPMENT CORPORATION, MADISON GUARANTY  
SAVINGS & LOAN, CAPITAL MANAGEMENT  
SERVICES, AND RELATED MATTERS**

MAY 7, 8, 10, 14, 15, 16, 24, 29, 30, AND 31, 1996  
JUNE 4, 5, 6, 7, 8, AND 12, 1996

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



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**INVESTIGATION OF WHITEWATER  
DEVELOPMENT CORPORATION  
AND RELATED MATTERS**

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**DEPOSITIONS**

BEFORE THE

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WHITEWATER DEVELOPMENT CORPORATION  
AND RELATED MATTERS**

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**DEPOSITION OF HARRY DON DENTON  
IN RE: S. RES. 120**

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**TUESDAY, MAY 7, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of HARRY DON DENTON, called for examination pursuant to notice of deposition, at 2:11 p.m. in Room 640-A of the Hart Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, Esq.

Majority Associate Special Counsel

GLENN F. IVEY, Esq.

Minority Counsel

U.S. Senate

Committee on Banking, Housing, and Urban Affairs

534 Dirksen Building

Washington, DC 20510

On behalf of the Committee.

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## PROCEEDINGS

MR. BARTOLOMUCCI: Good afternoon, Mr. Denton. Before we begin the questioning, there's some preliminary information I need to impart to you. This is a deposition conducted pursuant to Senate Resolution 120 which establishes a Special Committee to investigate Whitewater Development Corporation, and certain other related matters.

As you know, this deposition is being conducted in advance of public hearings. You will be testifying tomorrow, and I am sure we will endeavor to provide a copy of your deposition to you at the hearing so that you can refer to it.

I will be asking you questions under oath. If you don't understand a question, let me know and I will rephrase it. And tell me at any point if you want to take a break.

I note that you are not represented by counsel today. Were you aware that you had that right?

THE WITNESS: Yes.

MR. BARTOLOMUCCI: Just so you know,

objections to the forms of questions we will note for the record, and objections may also be raised to questions on grounds of privilege or scope. Ultimately, however the Committee Chairman rules on any such questions.

Go ahead and swear him in. Whereupon,

HARRY DON DENTON

was called as a witness and, having first been duly sworn, was examined and testified as follows:

MR. IVEY: Along the lines of the scope statement that was just made, I wanted to just point out for the record my understanding of what the scope of this deposition is supposed to be today.

I've gotten a series of correspondence, two letters from John Bates who is the deputy independent counsel -- the most recent one being May 7, 1996 -- which states in part that you have now asked for our position with respect to the Committee's proposed examination of Mr. Denton concerning his knowledge of the April 1985 fundraiser involving Madison Guaranty.

1 At this time we do not believe our  
2 investigations and prosecutions will be hindered or  
3 impeded if Mr. Denton were questioned about matters  
4 regarding the April 1985 fundraiser.

5 In addition, I received a memorandum from  
6 Mark Brenner; we have been corresponding about the  
7 scope of this deposition as well. This memorandum is  
8 dated May 3, and it reads in its entirety as follows:  
9 "As we discussed this afternoon, Mr. Denton will be  
10 appearing for a deposition on Tuesday, May 7, 1996  
11 and then will be appearing before the Special  
12 Committee members on Wednesday, May 8, 1996. The  
13 Independent Counsel has expressed concern that we  
14 discuss only the Whitewater investment. As we  
15 agreed, this was an amenable solution for all  
16 parties."

17 So my understanding is that we were going  
18 to -- the scope of this deposition will be the  
19 Whitewater investment, and it will be expanded by  
20 this May 7 letter to include the April 1985  
21 fundraiser. And my understanding is also that we are  
22 specifically not going to discuss Madison Guaranty

---

1 Savings & Loan.

2 MR. BARTOLOMUCCI: I don't think I disagree  
3 with anything that Mr. Ivey has said. I will just  
4 mention, since we've started down this road, one more  
5 piece of correspondence we have from the Independent  
6 Counsel which is a May 3 letter, indicating that -- I  
7 am quoting here -- "at this time we do not believe  
8 our investigations and prosecutions would be hindered  
9 or impeded if Mr. Denton testifies concerning the  
10 Whitewater investment, provided that testimony does  
11 in the delve into the banking practices of Madison  
12 Guaranty Savings & Loan."

13 So it is my understanding based upon the  
14 May 3rd and May 7th letters of the Independent  
15 Counsel, that what they would object to is  
16 examination concerning "the banking practices of  
17 Madison Guaranty," and I certainly have no intention  
18 of going into such matters, with the exception being  
19 the 1985 Madison fundraiser.

20 It's not clear to me that that is a  
21 "banking practice" or relates to a banking practice  
22 of Madison Guaranty, but because it had to do with

1 Madison Guaranty, we did get an express agreement on  
2 the part of Independent Counsel that there would not  
3 be a problem with us looking into that particular  
4 issue. So I think I can agree with Mr. Ivey that  
5 this deposition will concern the Whitewater  
6 investment, and then also the '85 fundraiser.

7 THE WITNESS: The May 3rd letter from OIC  
8 is from whom?

9 MR. BARTOLOMUCCI: Bates.

10 MR. IVEY: I've got copies if you would  
11 like.

12 THE WITNESS: Yes, sir.

13 EXAMINATION

14 BY MR. BARTOLOMUCCI:

15 Q State your full name for the record.

16 A Harry Don Denton.

17  
18  
19 Q And am I correct that you are currently the  
20 assistant manager of the Little Rock National  
21 Airport?

22 A I am the manager of properties and security

1 at the Little Rock National Airport.

2 Q How long have you been employed at the  
3 Little Rock National Airport?

4 A Since August 1988.

5 Q And am I correct, you have a BA in business  
6 administration from Memphis State University?

7 A That's correct.

8 Q What year was that?

9 A 1965.

10 Q And you also did some studying at the  
11 American Bankers Association National Lending and  
12 Graduate School at the University of Oklahoma?

13 A That's correct, American Bankers  
14 Association continuing education, study.

15 Q And what year was that?

16 A Approximately 1976.

17 Q And you were the senior lending officer at  
18 the Union National Bank in Little Rock from 1974 to  
19 January of 1984?

20 A That's correct.

21 Q Were you employed at Union National Bank  
22 for some period outside of that time frame?



1 A No, I started work there in April of 1974  
2 as chief lending officer.

3 Q So your correct title would be chief  
4 lending officer?

5 A My title was senior vice president and  
6 chief lending officer.

7 Q And am I correct that you joined Madison  
8 Guaranty Savings & Loan in April of '85?

9 A That's correct.

10 Q And you were hired by Jim McDougal?

11 A That's correct.

12 Q What position did you hold at Madison  
13 Guaranty?

14 A I went in as a consultant, with no title.  
15 I discovered, sometime during examination by the  
16 Federal Home Loan Bank examiners in 1986, that the  
17 board, without my knowledge, nor notice, had reported  
18 me senior vice president and chief lending officer.

19 Q And am I correct that you resigned from  
20 Madison Guaranty shortly after the July '86 Federal  
21 Home Loan Bank Board meeting, at which meeting  
22 Mr. McDougal was ousted from Madison Guaranty?

---

10

1 A Yes.

2 Q Did there come a time after your departure  
3 from Madison Guaranty that you went back to work or  
4 did any work for Union Bank?

5 A Yes, I did.

6 Q What was that?

7 A I worked for approximately one year as a  
8 liaison officer between counsel and the bank,  
9 involving some litigation on three to four cases. I  
10 don't recall what year that would have been.

11 Q Would it have been in the '80s or in  
12 the '90s?

13 A It would have been in the '80s, because I  
14 went with the airport in 1988, so it was  
15 approximately 198 -- it was after I left Madison in  
16 '87, so it would have been 1987 until I went to the  
17 airport in 1988.

18 Q When did you first meet Jim McDougal?

19 A Approximately 1975, perhaps 1976.

20 Q All right, and in what context did you meet  
21 him?

22 A In my function as chief lending officer

1 with the Union National Bank in Little Rock, McDougal  
2 was introduced to me by the owner and chairman of  
3 that institution, Herbert McAdams. McAdams had been  
4 contacted by former Senator Fulbright regarding some  
5 credit, some loans that were to be made to McDougal  
6 and the Senator.

7 Q Were these loans in connection with real  
8 estate developments?

9 A Yes.

10 Q And I take it there was more than one such  
11 loan?

12 A Right. Referred to that as real estate  
13 development -- that may be somewhat of an  
14 exaggeration -- the acquisition of raw undeveloped  
15 real estate, parceled off and sold off in lots for  
16 notes receivable. There were -- we financed a number  
17 of those transactions over the years for the Senator  
18 and McDougal.

19 Q How many loans to McDougal do you think you  
20 were involved with at Union National Bank?

21 A Jointly with the Senator, perhaps 10.

22 Perhaps 10 to 15. With McDougal and others, perhaps

---

1 another 10.

2 Q And were all of these loans for development  
3 or land acquisition?

4 A No. Some of the loans to other parties,  
5 one being the current governor of Arkansas, Jim Guy  
6 Tucker, was for the acquisition of an apartment  
7 complex and conversion to a condominium. Some of the  
8 loans were for the acquisition of a controlling  
9 interest in the outstanding stock of the Bank of  
10 Kingston.

11 There were small business loans for various  
12 purposes in addition to those. There was one loan I  
13 particularly remember that was a joint loan for  
14 equity with Bill Clinton and Jim McDougal.

15 Q Tell me about your first involvement with  
16 Bill Clinton.

17 A My first contact could have been -- would  
18 have been a loan that was granted in June of 1978 in  
19 the amount of \$20,000.

20 Q I am going to show you a document; the  
21 Bates number is partially obscured, but it appears to  
22 be DKRT 800727. It is a Union National Bank

1 promissory note. Does this reflect information  
2 related to the loan you were just describing?

3 A Yes, this would have been the customer copy  
4 of that obligation.

5 Q And your initials appear in the lower  
6 left-hand corner, HDD?

7 A Well, those are my typed initials; that's  
8 correct. The original would have included my  
9 handwritten initials.

10 Q You approved this loan?

11 A I was instructed to grant the loan and I  
12 initialed, signed off the loan authorizing that funds  
13 be disbursed.

14 Q Who instructed you to make the loan?

15 A Herb McAdams. I was informed via one of  
16 his emissaries, a lobbyist that worked for the  
17 bank -- one of two persons and I do not specifically  
18 recall -- would have been Eugene Smith, now deceased;  
19 the other person would have been Paul Berry. They  
20 both functioned in that capacity. And Smith died  
21 sometime along that period, I am not sure of the  
22 exact time of his death.

1 Q So either Smith or Berry came to you and  
2 said we want you to or instructed you to approve this  
3 loan to McDougal and Bill Clinton?

4 A Yes.

5 Q Do you remember what Bill Clinton's  
6 position was at that time?

7 A He was the state Attorney General.

8 Q So he was a prominent public figure?

9 A He was a public figure.

10 Q You knew who he was?

11 A Yes.

12 Q You hadn't met him before?

13 A I had not.

14 Q What else did the emissary, Smith or Berry,  
15 tell you at that time?

16 A I think I questioned the purpose of the  
17 loan, the reasoning for granting the loan, and was  
18 informed that the Attorney General was an  
19 up-and-rising political star and that it would be  
20 good business for the bank. Of course I had  
21 experience with McDougal, and even though I had been  
22 very successful in extending credit to McDougal and



1 the Senator, I do not believe we had extended  
2 unsecured credit, or credit without the Senator's  
3 endorsement, prior to this time.

4 In my opinion, at that time, I would not  
5 have loaned Jim McDougal \$20,000 unsecured.

6 Q That is to say without --

7 A The joint maker of Bill Clinton did not  
8 assist in that consideration.

9 MR. IVEY: Could I have read back the last  
10 answer?

11 (The reporter read the record as requested.)

12 BY MR. BARTOLOMUCCI:

13 Q All right. So you had been involved with a  
14 number of loans being made to McDougal and to the  
15 Senator, but your testimony to me is that you would  
16 not, in June of '78, have made a \$20,000 unsecured  
17 loan to Mr. McDougal himself?

18 A That's correct.

19 Q And was that based upon your experience  
20 with these prior loans?

21 A It was based on my understanding of Jim  
22 McDougal's net worth and his ability to repay an

1 unsecured indebtedness. All the other loans that had  
2 been extended had been extended to McDougal were all  
3 on an unsecured basis, but they were additionally  
4 supported by Senator Fulbright's liability or  
5 involvement. I had no question on the repayment  
6 ability from the Senator.

7 Q Now, why did the inclusion of then-Attorney  
8 General Clinton on this loan not improve your  
9 confidence in it?

10 A It certainly was not one of character  
11 consideration; it was a matter of economic net  
12 worth. As I recall, I don't believe I was supplied a  
13 financial statement but I was informed that the  
14 Attorney General had a very modest net worth. And I  
15 don't recall the exact numbers now, but I do know  
16 that those officers were compensated very modestly,  
17 at that time.

18 Q Now, did you ever find out what the  
19 intended purpose of the loan was?

20 A I think I knew at the time that it was for  
21 the acquisition of real estate, much similar to what  
22 Jim had been doing in earlier times. I was under the

1 impression at the time that the seller was carrying  
2 the balance of the note; in other words, that  
3 McDougal and the Clintons were purchasing real estate  
4 and were using the \$20,000 as a down payment, and the  
5 seller would carry the balance of the acquisition  
6 price.

7 I was not aware at the time that another  
8 bank was supplying a first mortgage loan, secured by  
9 the property.

10 Q If you had known that, would that also have  
11 increased your concern about this loan?

12 A Not necessarily, because I was under the  
13 impression that it was an equity loan and that it is  
14 likely the owner carried the bulk of the  
15 indebtedness, I don't think that would have  
16 necessarily distracted from it. There would have  
17 been some -- some ego or some pride of -- I would  
18 think I would have felt more comfortable as a lender  
19 letting a seller carry the note as opposed to another  
20 lender. I in essence took a secondary position to  
21 another lender which traditionally banks don't like  
22 to do.

1 Q Now, I want to show you what appears to be  
2 another version of that promissory note. This is  
3 document DKRT 900149. And just draw your attention  
4 to where your typed initials are; they appear to be  
5 crossed out and then someone else's initials are  
6 written over?

7 A No, that's --

8 Q Do you know what this is?

9 A That's my handwritten initials; that is a  
10 copy of the original.

11 Q These are your initials?

12 A That's my initials.

13 Q Never would have guessed it.

14 A You are very insulting. Wait until you see  
15 my signature. It is worse.

16 Q Did you ever have any discussions with  
17 Mr. McAdams about this loan?

18 A I do not believe I did.

19 Q Around the time that the loan was made, did  
20 you have any discussions with Mr. McDougal about the  
21 loan?

22 A I'm certain I did. I do not specifically

1 recall any conversations.

2 Q Do you recall any conversations with  
3 Governor -- or Mr. Clinton about the loan?

4 A I had no conversations with the Attorney  
5 General at that time. As a matter of fact, I never  
6 met him at that time. The note was delivered to me  
7 signed. I could not verify that he signed the note.

8 Q Now, where did your understanding of  
9 Mr. Clinton's financial situation come from? Did he  
10 tender a financial statement?

11 A I did not receive a financial statement.  
12 As a matter of fact, we were criticized by the  
13 regulators -- the national bank examiners,  
14 controllers of the currency, as I remember, one year  
15 particularly -- probably 1979, perhaps early 1980 --  
16 that loan was cited as a loan lacking adequate  
17 financial information. I think it was fairly well  
18 publicized in the local media that the constitutional  
19 officers were very modestly compensated. That was an  
20 issue that was, I think, before the public.

21 Q Now, did you say to anyone, to Mr. Smith or  
22 Mr. Berry, okay, I will approve this loan but we at

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1 least need to get a financial statement from  
2 Mr. Clinton?

3 A No, I considered it worthless. I didn't  
4 press the point. I followed instructions. Closed  
5 the loan promptly.

6 Q I want to show you a document which is  
7 Bates numbered B 00002 through B 00004. These are  
8 minutes of the Union National Bank's directors loan  
9 review committee, dated July 5th, 1978. Let me ask  
10 you, is that what these appear to be?

11 A Yes.

12 Q Then I note that the document says "the  
13 committee reviewed the following loans," on the  
14 second page, the B-3 page, it says "Mr. Denton," and  
15 then it mentions \$20,000 new loan to Bill Clinton on  
16 June 19, 1978 at 10 percent unsecured, due June 19,  
17 1979. Those were the terms of the loan; correct?

18 A This is somewhat unusual in the fact that  
19 it doesn't note that it is a joint loan with Jim  
20 McDougal.

21 Q That was actually one thing I was going to  
22 ask you about. So Mr. McDougal should have been



1 listed there?

2 A He ordinarily would have. I'm not saying  
3 that it was incorrect for it not to be, but I would  
4 under normal circumstances, would have listed joint  
5 makers because obviously in this case that's only  
6 half of the maker. That was probably an effort at  
7 politics to improve the appearance of the loan, I  
8 suppose, to make it be evaluated on its face value.

9 Q Who would have been responsible for the  
10 preparation of these minutes?

11 A That would have been made by the secretary  
12 of the directors loan review committee. In that case  
13 I believe it was -- this reflects that Carl Roberts,  
14 secretary -- Carl Roberts was a junior officer in the  
15 financial institution. He was manager of the credit  
16 department. I can't explain that inconsistency.

17 Q Now, I note from the promissory note that  
18 the loan was made on June 19, '78. This meeting  
19 occurred early the next month, on July 5th. What  
20 would have been the purpose of the meeting with  
21 respect to this loan?

22 A The process at that bank was very unique.

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1 Loans were not preapproved by the director of the  
2 loan review committee. It was a reporting after the  
3 fact. The loan officer was the sole entity with the  
4 responsibility to extend credit, and his actions --  
5 his or her actions were subsequently reported to the  
6 directors loan review committee.

7 Q What was the role of the directors loan  
8 review committee?

9 A Review.

10 Q Did they have authority to overrule loans?

11 A Not after the fact. Certainly could  
12 express their displeasure, and that occasionally did  
13 occur.

14 Q But the loan was already made; there is  
15 really nothing they could do about it at that point?

16 A That's essentially the essence of it.

17 Q We have another set of minutes, which are  
18 Bates numbered B 00008 and 9. And this reflects a  
19 meeting that occurred two days later of the officers  
20 loan review committee, and it indicates that this  
21 same loan to Bill Clinton was discussed.

22 I guess my first question is, what was the

1 role of the officers loan review committee? And if  
2 you could for me, contrast it with the role of the  
3 directors loan review committee?

4 A The officers loan review committee was a  
5 committee made up of the loan officers of the  
6 institution. I served as chairman of the officers  
7 loan review committee. It functioned in the same  
8 capacity that the directors loan committee did, in  
9 that it was a review. The individual loan officer  
10 was the sole authority, and I use that rather  
11 loosely, but the loan officer and his supervisor.

12 Each loan officer had a predesignated limit  
13 amount that he could extend credit. It was broken  
14 down, as I recall, on a secured and unsecured basis.  
15 And as long as a loan request fell under that limit,  
16 then that officer could approve the loan without any  
17 other concurrence.

18 If, in fact, that amount exceeded that  
19 individual's designated loan amount, then that person  
20 could join with another officer, a supervisor --  
21 excuse me -- a superior, up to the amount of the  
22 limit for that next individual's approval level.

1 Again, all the decisions were made without  
2 committee action. The concept at that particular  
3 time was that a committee don't think very well. The  
4 committee served as a review for prior approved  
5 loans.

6 The second primary function of the loan  
7 officer review committee was a training ground. The  
8 loans were discussed, and frankly, it was discussed  
9 much more severely at the loan officer level. And it  
10 actually was utilized to train junior lending  
11 officers on the proper way to structure credits.

12 Q Now --

13 A The process is a loan would be made; it  
14 then would go to the officers loan review committee  
15 and then, once it passed through that committee, the  
16 way it was structured, it then would go before the  
17 directors loan review committee.

18 Occasionally you would have a situation  
19 where the regular scheduled commission meeting, the  
20 director's meeting might fall a few days earlier, so  
21 in this case it apparently did. But it made it to  
22 the directors review before the loan officers.

1 Q But neither of these committees had the  
2 responsibility of deciding whether the loan would be  
3 made, since that was up to the loan officers, with  
4 respect to this loan, you had already made that  
5 decision?

6 A That's correct.

7 Q So then the sole purpose of these  
8 committees, apart from the training function you  
9 mentioned, was just to review what had been done by  
10 loan officers?

11 A That's accurate.

12 Q I will just note that this second set of  
13 minutes, the July 7th minutes, do list both Bill  
14 Clinton and Jim McDougal as being on the loan.

15 A The second one, the loan officer committee,  
16 was a different forum, so it was presented  
17 differently.

18 Q Do you have any recollection of either of  
19 these meetings, what the discussion about the loan  
20 was, other than, you know, the strict terms of it?

21 A I do not specifically recall. I do not  
22 recall there being any scrutiny of the loan,

1 criticism, or undue questioning of the credit. I  
2 think all the parties would have been aware who have  
3 Bill Clinton was, and probably why it was being  
4 granted, so there were really no questions raised.

5 Q You said to me that -- let me start again.  
6 Who did you say Herbert McAdams was?

7 A McAdams was an investor that owned the  
8 controlling interest of the Union National Bank of  
9 Little Rock.

10 Q So if he said we are going to make this  
11 loan to this guy because he was an up-and-coming  
12 star, then it was going to happen?

13 A That's right.

14 Q And the July 5th minutes also list Hall  
15 McAdams?

16 A Hall was his son. Another party listed at  
17 the director's review was Bob Connor who was the  
18 son-in-law of the chairman and was president of the  
19 bank.

20 Q Is there anything else about these minutes  
21 that catches your eye, or is otherwise remarkable?

22 A I haven't had a chance to review them. I

1 will.

2 Q Please.

3 A I note in the minutes in attendance was  
4 Gene Smith, so it was very likely Gene Smith would  
5 have been the person passing the instructions.

6 Q The person you referred to as the emissary?

7 A That's correct. I reviewed the directors  
8 loan committee minutes and nothing else attracts my  
9 attention.

10 Q Did you get a chance to look at the other  
11 one?

12 MR. IVEY: You mean -- sorry, I thought  
13 you'd looked at that one already (handing).

14 THE WITNESS: I note on the officers loan  
15 review committee that Paul Berry was in attendance,  
16 so apparently both of the lobbyists were working at  
17 the bank at this time.

18 BY MR. BARTOLOMUCCI:

19 Q Why do you describe them as lobbyists?

20 A That was their primary function; they were  
21 in public relations but primarily functioned as  
22 lobbyists throughout the year, particularly during --

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1 when legislature was in session.

2 Q And is it your -- you are saying that they  
3 had clients other than Union National Bank or they  
4 were Union Bank's lobbyists?

5 A That's right; they would work exclusively  
6 for Union National Bank. Nothing attracts my  
7 attention on the officers loan review minutes.

8 Q So then it is understandable why they would  
9 want to see to it that a loan was made to the  
10 Attorney General, given that they were lobbyists?

11 A That would have been their assigned  
12 function, yes.

13 Q In June of '78?

14 MR. IVEY: I'm sorry, could you read back  
15 the question and the answer that was just given.

16 (The reporter read the record as requested.)

17 BY MR. BARTOLOMUCCI:

18 Q In June of '78, was then-Attorney General  
19 Clinton an announced candidate for the governor?

20 A I think there was speculation, and I don't  
21 recall specifically, but Clinton was pretty well  
22 designated as having a bright future in Arkansas.



1 And I think it was speculated, perhaps even by then,  
2 that he likely would be either a senatorial candidate  
3 or for the governor's position.

4 Q As far as you know, was Hillary Clinton at  
5 all involved in this loan?

6 A No, not to my knowledge. I am aware now  
7 that she executed the first mortgage note, but I did  
8 not know that at the time.

9 Q Did you ever receive instructions from  
10 anyone at the bank that friends of Bill or Hillary  
11 Clinton were to receive unsecured loans?

12 A I thought all politicians received  
13 unsecured loans. And I say that rather  
14 sarcastically. There was a great deal of freedom in  
15 the extension of credit to politically affiliated  
16 parties through the Union National Bank. McAdams was  
17 politically active, and it was a bank that was  
18 friendly to politicians.

19 Q Well, did anyone at the bank ever tell you  
20 look, if a friend of Bill or Hillary Clinton comes in  
21 for an unsecured loan, give it to them?

22 A No.

1 Q Did you hear about that happening at the  
2 bank?

3 A I think every loan officer that was  
4 approached by a political entity for the extension of  
5 credit handled it very delicately. If they could  
6 possibly grant it, they did it without question. If  
7 they had some philosophical problems with it, they  
8 typically would take it to their supervisor, and it  
9 would work its way to the top, as far as it had to go  
10 before the loan was granted. Seldom were loans  
11 declined to political entities.

12 Q But specifically, you are not aware of  
13 friends of Bill or Hillary Clinton getting favorable  
14 treatment by virtue of their association to the  
15 Clintons?

16 A Not per se.

17 Q Okay, I want to turn now to the --

18 A Based on my comment that I just made  
19 regarding the sensitivity of politically related  
20 loans is not unique to Union National Bank. Prior to  
21 my going with Union, I was the national bank examiner  
22 with the controller's office for 10 years, and from

1 that experience, I recognize that that's very similar  
2 in most commercial banks.

3 MR. BARTOLOMUCCI: Off the record.

4 (Discussion off the record.)

5 BY MR. BARTOLOMUCCI:

6 Q While we were off the record, you asked and  
7 I showed you copies of the promissory note from June  
8 1978. Did you find anything else in it remarkable or  
9 unusual?

10 A No.

11 Q Turning to another loan, the Union Bank's  
12 participation in the Whitewater mortgage at Citizens  
13 Bank, are you generally familiar with that loan?

14 A Vaguely.

15 Q Let me show you a document and see what you  
16 remember about it. This is a document, 7852.

17 A Okay.

18 Q Now, do you have any recollection of Union  
19 Bank participating in a loan at Citizens Bank?

20 A I vaguely recall that loan, when it went on  
21 the bank's books in August of '78. I was not aware  
22 that this was the same property on which the \$20,000

1 loan was made to secure --

2 Q You are saying you weren't aware in '78, or  
3 you weren't aware of it now?

4 A I became aware of it in the last two years,  
5 perhaps the last three years.

6 Q In '78 when you learned about this loan,  
7 you didn't know it was with respect to the same  
8 property that was involved in the \$20,000 loan?

9 A No, I did not tie the two together.

10 Q So is it safe to say you weren't involved  
11 in this participation?

12 A That is safe. I was involved to the extent  
13 that the loan participation would have gone through  
14 the loan officers review committee. The same  
15 scrutiny was not applied to loan participations,  
16 because you had the -- in essence the backing of the  
17 selling bank behind the credit. Even though it was a  
18 nonrecourse obligation, as a practical matter, those  
19 loans typically were traded much like excess cash or  
20 cash reserves. So if you had confidence in the  
21 selling bank, you typically didn't question the  
22 credit from the purchaser bank standpoint.

1 Q Did Union Bank frequently enter into  
2 participations?

3 A It was a major market maker in loan  
4 participations. It was a management of cash reserves  
5 service that the bank provided to the smaller banks  
6 throughout the state.

7 Q And I take it this had to be approved like  
8 any sort of other loan?

9 A Again, it did not go through the same  
10 amount of scrutiny that an arms-length loan would  
11 have involved.

12 Q And that would be because in part you are  
13 relying upon the work of the other bank?

14 A That's correct. The work of the other bank  
15 and secondarily, that moral obligation of the selling  
16 bank to repurchase it if problems arose in the  
17 credit. Typically if a loan participation were  
18 purchased, and at some later date the purchasing bank  
19 decided they didn't like the borrower or something  
20 adverse happened to the borrower, there was some bad  
21 publicity about the borrower and the purchasing bank  
22 became aware of it, they'd simply get on the phone

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1 and say hey, I don't like your ABC loan, buy it  
2 back. And it was a gentlemen's agreement in the  
3 industry at that time that that's the way it worked.

4 Q That's what you are referring to as a moral  
5 obligation?

6 A That's correct.

7 Q Union Bank would have had no legal rights  
8 against Citizens Bank in the event of a default by  
9 the borrower?

10 A If it was solely on behalf of the borrower,  
11 no. It was sold without recourse, and from a legal  
12 standpoint, the bank bore the same responsibility and  
13 liability.

14 Q So the participating bank essentially  
15 stands in the same shoes as the first bank; they are  
16 simply splitting the amount of the loan, vis-a-vis  
17 the borrower?

18 A That's accurate.

19 Q Let me show you another document which is B  
20 000001. Tell me what this is.

21 A It is a credit application as prepared in  
22 connection with the extension of credit. This form

1 is prepared by the loan officer, and submitted to the  
2 officers loan review initially, and then secondarily,  
3 to the director loan review committee.

4 This gives the basic terms, the correct  
5 description of the collateral, background information  
6 including the financials, the purpose of the credit,  
7 and the evaluation of the risk, at the bottom, as the  
8 approving originating officer designation. And then  
9 to the right, the various members of the loan officer  
10 committee that were present at the time of this  
11 presentation.

12 Q Now I take it this is an internal Union  
13 National document and not some contraci executed with  
14 Citizens Bank?

15 A That is correct. It is an internal  
16 document.

17 Q This last document we looked at, this  
18 certificate of participation, would this reflect the  
19 terms of the agreement with Citizens Bank?

20 A I'm sorry?

21 MR. BARTOLOMUCCI: Read that back.

22 (The reporter read the record as requested.)

1 THE WITNESS: Yes.

2 BY MR. BARTOLOMUCCI:

3 Q All right, now, who is Howard Qualls?

4 A Qualls was the manager of the correspondent  
5 banking department at the time.

6 Q What is meant by "correspondent banking"?

7 A That is a division in the bank. The  
8 correspondent division is the department that handle  
9 the banking relationship of what's referred to as  
10 downstream smaller banks throughout the state.

11 In a state chartered institution, the  
12 reserves can be placed with larger commercial banks.  
13 And Little Rock, in Arkansas, the state chartered  
14 financial institutions maintained their reserves on  
15 deposits with one bank, being Union National Bank.

16 And in connection, relationships were  
17 developed, and obviously it was a very lucrative  
18 business. The small bank and Citizens had to  
19 maintain reserves whereas in the National Bank those  
20 reserves are maintained with the Federal Reserve  
21 System in a state bank like Citizens Bank of  
22 Flippin.



1           Those reserves, excess cash if you will,  
2 could be deposited with commercial banks; in this  
3 case, the Union National Bank. So it would be a  
4 large deposit base. And as a result of that large  
5 deposit base, many accommodations were extended to  
6 those banks. This is an example; they bought a loan  
7 participation.

8           Q   Now, the credit application also mentions a  
9 Patterson of the Citizens Bank. Do you know who Pat  
10 Patterson is?

11          A   Patterson, I believe, was the president at  
12 the time of the granting of this loan.

13          Q   The president of Citizens Bank?

14          A   That's correct.

15          Q   Do you happen to know what his involvement  
16 in this loan was?

17          A   According to the loan participation  
18 certificate, he was the originating officer that sold  
19 the loan to Union Bank.

20               I have subsequently learned that he had a  
21 permanent interest in the land that was purchased  
22 with the proceeds of this loan. His name was J-e-n

1   and his nickname was Pat. I did not know the  
2 gentleman. I assume he was a gentleman.

3          Q   Now, what did you come to learn about  
4 Mr. Patterson's involvement in the underlying real  
5 estate transaction?

6          A   In the last two years or so, I learned from  
7 reviewing documents that he and a group of other  
8 investors had purchased this land from a bankrupt  
9 entity, and had in turn sold it to McDougal.

10          Q   And then McDougal took out the mortgage to  
11 finance the purchase of the property at Citizens  
12 Bank?

13          A   That's correct.

14          Q   And then that's the same loan that Union  
15 Bank took a 50 percent participation in?

16          A   That's correct.

17          Q   Is that sound banking practice to -- well,  
18 let me start again.

19               The fact that Mr. Patterson had an interest  
20 in the deal, is that at all problematic from the  
21 banking standpoint?

22          A   In my opinion, yes.

1 Q Why was that problematic?

2 A I am not sure I am aware of the disclosure  
3 he made to his board. He likely should have remained  
4 out of the loop on that transaction. If the bank  
5 elected to make that loan, he should not have been a  
6 party to it in my opinion.

7 The second step of the process, when the  
8 loan was sold to Union Bank, that disclosure should  
9 have been made to Union Bank and I am not aware of  
10 any such disclosure.

11 Q Okay, so at the minimum, he should have  
12 disclosed his interest in the transaction, both to  
13 his bank and then to Union Bank, in connection with  
14 these loans?

15 A Knowing no other facts in the transaction,  
16 that would be my observation, with the amount of  
17 facts I have at hand.

18 Q Now, the credit application indicates,  
19 under prepayment agreement, that "principal to be  
20 reduced by at least 10 percent every six months, UNB  
21 will be first out." Is that reflected at all in this  
22 certificate of participation that we have been

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1 reviewing?

2 A No, that's part of the gentlemen's  
3 agreement. Banking regulations required at that time  
4 that if a loan participation were sold with recourse  
5 or any priorities, then it had to be booked as a  
6 liability. As an example, if an originating bank  
7 made a \$100,000 loan and sold it to Union Bank with  
8 the understanding that they would guarantee the loan  
9 to be good, they would have to continue -- if they  
10 sell that loan off and set up a liability account for  
11 that contingent liability, their obligation is to  
12 keep Union Bank whole, so as a practical matter that  
13 didn't accomplish anything by keeping it on their  
14 books as a liability.

15 What they were trying to accomplish was  
16 selling off of the loan and converting that to cash;  
17 that's the reason loans were sold, usually; sometimes  
18 the concentrations of credit, sometimes because of  
19 simply the very volume of loans an institution might  
20 have. And many times, it was to keep their  
21 loan-to-deposit relationship in a proper range so it  
22 would not concern the regulators.

1           So if -- usually what happened in the  
2 marketplace is the selling bank would have an  
3 agreement very similar to this, says this loan is  
4 sold to you without recourse, period, paragraph, as a  
5 gentleman's understanding, even though they would not  
6 guarantee to buy it back, they would give a  
7 first out/first in -- I have forgotten the  
8 terminology that was used here -- first out  
9 commitment, a verbal first out commitment. So if you  
10 got a loan for \$180,000 secured by \$240,000 worth of  
11 collateral, and Union Bank borrows half -- buys,  
12 pardon me, rather than borrows -- buys half of that  
13 loan and gets a first-out commitment, that reduces  
14 their risk significantly, because all the collateral  
15 is still there, and they get their money first. So  
16 the loss always comes on the tail end of the loan  
17 transaction. The last money is the hardest to get.

18       Q    So a term like this, that the principal to  
19 be reduced by at least 10 percent every six months  
20 and UNB will be first out, is designed to give UNB  
21 some security?

22       A    Comfort. That says that every dollar

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1 collected will be sent to Union Bank. You get out  
2 first.

3       Q    Do you have any knowledge as to whether, in  
4 fact, the principal was reduced by at least 10  
5 percent every six months?

6       A    I have no personal knowledge.

7       Q    Now, under background on this credit  
8 application, it notes that McDougal had been  
9 associated with Senator Fulbright and with Union Bank  
10 since 1970, and that his experiences have been  
11 satisfactory. And it lists certain of his  
12 enterprises; McDougal & Associates, Pembroke Manor,  
13 Roland Manor, Flowerwood Farms.

14           Now, would that be referring to loans made  
15 to those entities? Is that the experience that  
16 would --

17       A    Yes, all those names are familiar. And  
18 those were loans that -- those were the names of the  
19 projects on which the loans were made to McDougal and  
20 Fulbright.

21       Q    So you were involved in some of those  
22 loans?

1 A Yes. Basically all of them, as I recall.

2 Q Okay -- go ahead.

3 A This memorandum says that Union had been  
4 associated with McDougal since September of 1970. I  
5 do not recall the relationship being that old. I  
6 could be an error, but I do not recall it being that  
7 old.

8 Q Your testimony was that the first contact  
9 with McDougal and Fulbright was in '75?

10 A '75, '76.

11 Q Now, is it accurate to say that from the  
12 bank's standpoint, its experience with McDougal was  
13 satisfactory?

14 A Yes.

15 Q Which is to say that the loans were  
16 collected; there wasn't a problem with them?

17 A That's really saying more than that. That  
18 they were collected on an orderly basis, without  
19 workout problems or duress, or heavy negotiations, or  
20 threats of litigation, or excessive delinquencies.

21 Q What do you remember about the loan to  
22 Roland Manor?

1 A I specifically can't distinguish loans to  
2 that particular company.

3 Q Now, were any of your experiences with  
4 McDougal, in connection with any of the loans  
5 mentioned here, unsatisfactory?

6 A No.

7 Q The form also notes that Clinton is both  
8 Attorney General and governor-elect; I am just trying  
9 to pinpoint when he might have become  
10 governor-elect. This form is dated August 3rd, '78.  
11 Do you happen to remember when the gubernatorial  
12 elections would have been held in 1978?

13 A Yes, it would have been November of '78,  
14 because, as I recall, historically Clinton was  
15 defeated in his second attempt. The governorship was  
16 a two-year term and he was defeated in 1980 so that  
17 would have been his candidacy for the first term. I  
18 do not recall if, in June when I made the loan, if he  
19 was an announced candidate, but I do recall that  
20 there was strong talk that he would -- he was either  
21 a potential candidate -- I do not recall his being a  
22 candidate at that time.



1 Q In fact, the form says governor-elect,  
2 which I understand to mean he's been elected governor  
3 and hasn't assumed the post yet?

4 A That's inaccurate.

5 Q But at least as of August of '78 then, it  
6 is your recollection he was an announced candidate  
7 for the --

8 A I do not recall if he was announced. For  
9 clarity purposes, I am not the author of that  
10 document. I would expect he would have been  
11 announced in August for a November election, but I  
12 just don't know personally.

13 Q All right, the form also notes that  
14 Clinton's past and present experience with the bank  
15 has been satisfactory. Do you have any knowledge  
16 about what that past and present experience would  
17 have been apart from the \$20,000 loan that was made  
18 just a couple of months earlier?

19 A No.

20 Q So you weren't involved with any loans to  
21 Governor Clinton prior to the \$20,000 loan in '78?

22 A No. Not -- not that I recall. And I am

1 reasonably certain I was not.

2 Q Okay. Under "financial information," it  
3 notes that no financial information was available for  
4 Bill Clinton. Would it be typical for a  
5 participation like this to go out without the bank  
6 getting financial information from one of the  
7 borrowers?

8 A Occasionally, the bank's better off without  
9 information if it is extremely poor and derogatory.  
10 So in that case, the reason it probably was not  
11 obtained was it was known that it would not offer any  
12 substantial support.

13 Q So is it fair to say the bank was  
14 deliberately turning a blind eye to Clinton's  
15 financial situation?

16 A I can't speculate on that loan officer's  
17 reason for not requiring it. In the earlier loan in  
18 June when I did not require it, I was of the opinion  
19 that it was worthless, and frankly wasn't worth the  
20 hassle if it offered no support or substance.

21 Q That was your opinion about this loan?

22 A That was my opinion about the loan, the

1 \$20,000 loan that was granted by me in June of that  
2 same year.

3 Q Did you have an opinion about this loan,  
4 the --

5 A No, I wouldn't have thought his financial  
6 condition would have improved significantly between  
7 June and August.

8 Q Now, the form indicates that McDougal's net  
9 worth was just over \$550,000. And the total loan  
10 would have been a little over \$182,000, half of that  
11 being assumed by Citizens Bank and half by Union  
12 National Bank. In your opinion, is that a sufficient  
13 net worth to make a loan of this size to him?

14 A The \$180,000 secured loan was a better loan  
15 than the \$20,000 unsecured loan.

16 Q And that's because --

17 A Collateral.

18 Q -- the property provides some security?

19 A On reflection, my statement I just made may  
20 be inaccurate because the land didn't sell very well,  
21 did it?

22 Q Which kind of brings me to my next

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1 question. Did you have an understanding in 1978 that  
2 the loan was to be paid off through the sale of the  
3 underlying property?

4 A Yes. It was my general impression, again,  
5 that McDougal and Clinton were buying raw,  
6 undeveloped land. And I thought, with the seller  
7 carrying the \$180,000 indebtedness, it was McDougal's  
8 normal style in his former Fulbright transactions to  
9 sell those lots for an amount far in excess of what  
10 he paid for them, receive a relatively small down  
11 payment, and accept a note from the purchaser for the  
12 balance, payable over a number of years. The notes  
13 didn't generate a very quick source of cash, but in  
14 the past, they had certainly generated a lot of  
15 assets, and were primarily represented by his  
16 half-million-dollar net worth.

17 The notes frequently were poor quality and  
18 there was a high default rate, but it was secured by  
19 land. McDougal did a pretty good job of promoting  
20 that lands. And if a loan -- if a loan were  
21 defaulted, he would turn around and sell it to the  
22 next guy and start all over again.

1           There always seemed to be a pretty good  
2 supply of investors willing to put \$300 down and sign  
3 a note for \$12,000 payable over 10 years.

4           Q   Now, referring back to the certificate of  
5 participation, the document indicates that the  
6 participation was accepted for Union National Bank by  
7 Morris Jackson. Can you tell me who Morris Jackson  
8 is?

9           A   Morris was a long-term junior officer; I  
10 believe he was assistant vice president in the  
11 correspondent banking department, and was a person  
12 that would have handled the paperwork and the  
13 communications with the bank.

14           Typically these loans were sold over the  
15 telephone. They were transactions where the selling  
16 bank's cash position would be short, they would call  
17 Morris Jackson and say hey, I am sending you three  
18 loan participations today. They are good deals, if  
19 you don't like them send them back to me, but they  
20 are in the mail, credit my account for \$200,000.  
21 That's generally the way those transactions came  
22 down.

1           Morris would get the package; typically the  
2 explanation, the information from this form was  
3 generated usually by telephone conversations from the  
4 borrower -- I mean, from the seller bank, and the  
5 correspondent department.

6           Q   Now, at the bottom of the credit  
7 application document, B-1, it says "evaluation of  
8 risk: Due to the individuals and the collateral  
9 involved, the risk is minimal." Do you share that  
10 assessment?

11           A   No, that was a very generous risk  
12 evaluation. I would have -- I might could have gone  
13 along with the minimum risk evaluation based on the  
14 first-out arrangement with the selling financial  
15 institution. The point of it being, I don't  
16 necessarily disagree with the risk evaluation, but I  
17 disagree with the reasons for the risk evaluation.

18           Q   That is to say, if the risk were minimal,  
19 you wouldn't attribute that to the individuals -- to  
20 the collateral involved; you would attribute that to  
21 the first-out provision?

22           A   The point, I could have evaluated the risk

1 as minimum. I probably would have said very modest  
2 risk due to the first-out arrangement from the Bank  
3 of Flippin and their willingness to repurchase the  
4 loan. We didn't really have any feel for the  
5 collateral, other than McDougal's reputation for  
6 previous ventures.

7 Q This is a document, CBF 260, labeled  
8 "credit advice." Can you tell me what this is?

9 A This is an internal document generated by  
10 Union Bank. This would be the piece of paper that  
11 would have created the entry following the telephone  
12 conversation that likely occurred between Patterson  
13 and Morris Jackson at Union Bank. The phone call  
14 came in, they agreed to the loan, Morris Jackson, or  
15 in this case, Mary Wolfe, who I assume was an  
16 employee of Morris Jackson's, typed this document,  
17 crediting the account of Citizens Bank & Trust  
18 Company of Flippin for the loan amount \$91,000, and  
19 deposited the proceeds to their account their account  
20 with Union National Bank.

21 Q The next document I would like to get your  
22 reaction to is Bates numbered B 00005 through 7,

1 minutes of the officers loan review committee for  
2 September 15, '78. And I will go ahead and point out  
3 up front, it indicates that you weren't present for  
4 it. But it also indicates that the loan to McDougal  
5 and Clinton, the participation was discussed.

6 Now, I guess my question is, this will be  
7 another case where the loan was discussed after the  
8 fact; it would have already within made and then it  
9 merely would have been talked about?

10 A That's accurate.

11 Q The date of the participation agreement is  
12 August 2nd, '78, and then, that's in the next month;  
13 right?

14 A That's accurate.

15 Q Do you see anything remarkable or unusual  
16 about those minutes?

17 A Loan number 9, following the loan  
18 presentation to James McDougal, is to 101 River  
19 Development Company. As I recall, I believe that was  
20 the selling entity for this same land.

21 Q And you testified that Mr. Patterson of the  
22 Citizens Bank was part of that, the selling entity.



1 A That's what I have since learned, yes.

2 Q So essentially then that's a loan to  
3 Patterson?

4 A Well, it appears to be a loan to a  
5 corporation in which Patterson is an investor.

6 Q Is that the sort of thing that should have  
7 been disclosed, either in connection with that loan  
8 or with the loan to McDougal and Clinton?

9 A Yes, and it very well could have been. I  
10 am not aware. I recall seeing this loan on the books  
11 of the financial institution but as you pointed out,  
12 I was not in attendance at this meeting.

13 Q If you had been at this meeting, would you  
14 have raised some questions about these loans in light  
15 of the knowledge that you had?

16 A Was that director loan committee or loan  
17 officer review committee?

18 Q Officers loan review.

19 A Yes, I would have raised some questions in  
20 that meeting.

21 Q All right, so --

22 A I think it is fair to say I probably would

1 have taken no action beyond asking questions.

2 Q Now, I just want to make sure I have all  
3 this straight. Mr. Patterson of Citizens Bank is  
4 involved in the corporation 101 River Development  
5 Company which is selling real estate to, among other  
6 people, Mr. McDougal and Mr. Clinton; that's correct?

7 A That's my understanding, yes.

8 Q And Union Bank, according to these minutes,  
9 was involved in a participation, a loan to River  
10 Development, apparently to -- a bridge loan to  
11 finance that property?

12 A I wouldn't describe it as a bridge loan,  
13 but it was a loan that assisted in the acquisition of  
14 that property.

15 Q Assisted in their acquisition of it so they  
16 could then turn around and sell it?

17 A In that respect, it would be a bridge loan,  
18 yes.

19 Q Then Union Bank loans Mr. McDougal and  
20 Mr. Clinton \$20,000 as down payment, or earnest  
21 money, in connection with their purchase of this  
22 property from 101 River Development; right?

1 A Correct.

2 Q And then Union Bank takes part in a loan  
3 from Citizens Bank, where we have Mr. Patterson, a  
4 loan to McDougal and Clinton, which is in effect the  
5 mortgage for their purchase of the tract?

6 A That's accurate.

7 Q So I guess my question is, is that  
8 problematic from a banking standpoint, from Union  
9 Bank's perspective?

10 A From Union Bank's perspective, the second  
11 step was probably an enhancement to the overall  
12 credit arrangement.

13 Q The second step being the participation?

14 A Right. Because it had a first-out  
15 arrangement, so it obtained -- it obtained  
16 collateral -- it retained -- obtained a first  
17 collateral position ahead of the Citizens Bank on the  
18 purchased part, which possibly could have enhanced  
19 its other \$20,000 unsecured loan.

20 Q But it is also --

21 A I don't know that I answered your  
22 question. Your question was probably more along the

1 line of proper banking procedures, and I don't know  
2 that I should attempt to separate one of the loans as  
3 opposed to both.

4 It certainly raises some questions, when an  
5 unsecured loan is made and then part of the first  
6 mortgage loan is also made by the same institution;  
7 it certainly raises questions that should be  
8 answered.

9 Q About proper banking procedure?

10 A Yes.

11 Q I am going to show you three more documents  
12 just for a minute. They are DKRT 900147, 900951 and  
13 900151. I think all three of these documents bear  
14 your typed initials.

15 A 147 and 151 are copies of the original and  
16 both bear my written signature as well as my typed  
17 initials. 155 appears to be a copy; it does not have  
18 my written initials.

19 Q And these documents reflect the refinancing  
20 of the \$20,000 loan; is that correct?

21 A Yes.

22 Q What is your memory about the refinancing

1 of that loan?

2 A The only recollection I have would have  
3 been probably on the 151 loan, September 17th of '79,  
4 about this time, I began to become uncomfortable with  
5 the absence of reduction on this note and began to  
6 press McDougal for payment. And then to a greater  
7 extent, in December, the next maturity -- this would  
8 have been about the time that McDougal and Tucker  
9 were involved in the apartment conversion and  
10 condominium development loan.

11 It basically had presented some problems.  
12 The sales had not materialized as rapidly as had been  
13 originally projected. The loan had become a problem  
14 for the bank.

15 And this loan that involved McDougal was  
16 stagnant, it had not received any reductions. There  
17 was inadequate financial support from one of the  
18 makers, Clinton; again, as I recall the financial  
19 institution did not have financial statements. And I  
20 began to press for payment probably in December,  
21 firmly in December of 1979.

22 Q But that would have been after the two

1 subsequent promissory notes --

2 A Renewals, yes.

3 Q -- renewals had been issued?

4 A Yes.

5 Q The first loan was for a term of one year;  
6 correct?

7 A Correct.

8 Q So June '79 rolls around, one year, and the  
9 loan hasn't been paid off, or even, none of the  
10 principal's been paid down; correct?

11 A That's accurate. That was unsatisfactory.  
12 I then began to place it on shorter maturities to  
13 press for payment, and to look at it on a more  
14 frequent basis.

15 Q That's why the second renewal is then in  
16 September '79?

17 A That's correct.

18 Q And the last one is December '79?

19 A I don't recall if December '79 was the last  
20 one or not. As I recall from memory it was  
21 approximately a two-year note effectively, so I don't  
22 think the loan was paid off until like June of 1980.

1 And I reconciled that with the McDougals' interest in  
2 the bank financing -- the Bank of Kingston  
3 controlling interest. So December of '79 may not  
4 have been the last renewal.

5 Q I think your memory is sharp. According to  
6 a loan history prepared by the RTC, the loan was paid  
7 off in June of 1980 with the proceeds of a loan from  
8 the Bank of Cherry Valley.

9 What do you remember about the  
10 circumstances surrounding the final payment of the  
11 loan?

12 A To follow my earlier and most current,  
13 recent statement, I was concerned with the  
14 McDougal/Tucker loan for the renovation of Park Place  
15 Inc.; that was the apartment conversion to a  
16 condominiums.

17 McDougal, in early '80 or sometime during  
18 '80, had begun to discuss the acquisition and the  
19 bank financing, the acquisition of the Bank of  
20 Kingston for him. And I pretty well had laid down  
21 the rules that, for us to consider financing the Bank  
22 of Kingston, he would have to clean up the Park Place

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1 loan, the Tucker/McDougal loan, get it out of the  
2 institution and get this \$20,000 loan paid off.

3 My memory at the time was that McDougal had  
4 used some of the Tucker/McDougal loan proceeds for  
5 the apartment complex to actually pay off this  
6 \$20,000 loan. I have been told that my memory was in  
7 error and I accept that, because I have no other  
8 documents to substantiate my earlier memory.

9 But to answer your question, I do recall  
10 that, and associate the repayment of the Union Bank,  
11 not from a bank from Cherry Valley, but from the  
12 other loan from Tucker/McDougal, that was on bank  
13 books.

14 Q Okay. So it is your recollection that the  
15 \$20,000 loan was paid off with the proceeds of a  
16 separate Union Bank loan to McDougal and Tucker, a  
17 loan that was in connection with this apartment  
18 complex?

19 A That's correct. And I don't recall how I  
20 thought that. I am of the opinion that McDougal  
21 suggested to me -- I don't recall him specifically  
22 telling me, but suggested -- perhaps I surmised



1 that's where McDougal got the money, because he was  
2 free to draw on that line of credit at will, without  
3 any documentation, for the Park Place development  
4 loan.

5 And it is entirely conceivable that --  
6 McDougal was pretty good at mixing up money, so he  
7 could have gone to Cherry Valley and gotten money and  
8 I thought it came out of another source. So it's  
9 probably not important, just an error.

10 Q Apart from your memory, are you aware of  
11 any documentary evidence which would support your  
12 recollection?

13 A No, because had I seen documents, I would  
14 have objected to the diversion of proceeds from the  
15 Park Place loan, I would have objected to that, so I  
16 am certain I saw no evidentiary information.

17 But I do know that, to follow my comment, I  
18 do know that the Park Place/Tucker/McDougal loan was  
19 moved at my insistence, and this loan was paid off at  
20 my insistence.

21 And both of those having been accomplished,  
22 I then agreed to finance the bank of Kingston

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1 acquisition by McDougal, Smith, Tucker, and some  
2 others.

3 Q Now, on this December '79 renewal, the due  
4 date seems to be obscured. It is expressed in a  
5 certain number of days. Do you have a  
6 recollection --

7 A No, I don't. I tried to read that just a  
8 minute ago and I can't. It seems to be an odd number  
9 of days, the last digit seems to be a 2, so -- it  
10 likely was 182 days, I think our people would have  
11 probably rounded the odd days, six months increments  
12 but would have rounded the days to end on a  
13 non-weekend.

14 Q These two earlier renewals in June and  
15 September, they would have been -- well, let me ask  
16 you, these would have been 60-day renewals?

17 A Well, we can certainly figure -- the  
18 maturity date is restated again on the calendar date  
19 at the bottom of the note, December 17, so September  
20 17th to December 17 would have been the number of  
21 days.

22 Q So three months?

- 1 A Yes.
- 2 Q And likewise on the June renewal, this
- 3 is --
- 4 A June to September, 90 days, give or take a
- 5 day for a weekend.
- 6 Q Okay. So then this figure down here
- 7 (indicating) on the December renewal?
- 8 A Would have been a six-month extension from
- 9 the December date.
- 10 Q Okay. So if it was due on June 16, 1980,
- 11 and it was paid off on June 23, 1980, so it was paid
- 12 off within a week of the due date?
- 13 A That would be accurate.
- 14 Q But during that time you were pressing
- 15 McDougal to pay off this note, were you similarly
- 16 pressing Governor Clinton?
- 17 A No. I never had any discussions with
- 18 Clinton.
- 19 Q You know who Barbara Spears is; right?
- 20 A Yes.
- 21 Q Do you know where Barbara Spears is today?
- 22 A Yes, she works for a financial institution

- 1 based in Little Rock; I believe it is the First
- 2 Commercial Bank. And she is the branch manager of a
- 3 branch in South Pulaski County, that is
- 4 P-u-l-a-s-k-i, which is the county in which Little
- 5 Rock is located.
- 6 Q You think it is called First Commercial
- 7 Bank?
- 8 A I believe it is First Commercial Bank.
- 9 Banks change hands every 90 days now and it is hard
- 10 to keep up their names.
- 11 MR. BARTOLOMUCCI: Let's take a short
- 12 recess just for a minute.
- 13 (Recess.)
- 14 BY MR. BARTOLOMUCCI:
- 15 Q Returning to the participation Union had
- 16 with Citizens Bank, I show you a document numbered --
- 17 it seems to have a D-47 in the corner; it may not be
- 18 a Bates number, but it is all I see on it.
- 19 Can you identify that document?
- 20 A Yes, this is a loan participation
- 21 certificate from Citizens Bank of Flippin to Union
- 22 National Bank of Little Rock, on the loan to James B.

1 McDougal and Bill Clinton in the amount of \$9105.60;  
2 dated September 12, 1980.

3 Q Now that's the same amount as the original  
4 participation; right?

5 A Approximately. Yes, it is.

6 Q The date on that?

7 A September 12, 1978.

8 Q The original is dated August of '78. Does  
9 this mean there had been no payment of principal over  
10 a two-year period?

11 A Either that or Union Bank didn't get any  
12 payment.

13 Q So it is possible the principal was made,  
14 but it would have gone to Citizens Bank?

15 A Yes.

16 Q Now, first of all, that's not consistent  
17 with the notion that principal was to be reduced at  
18 least 10 percent every six months and UNB will be the  
19 first out, is it?

20 A That's not consistent with the gentleman's  
21 understanding.

22 Q That appeared to be reflected in the credit

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1 application?

2 A Yes.

3 Q I thought you told me you weren't involved  
4 in the making of the participation. Did you have any  
5 involvement subsequently in the renewals or  
6 collections after --

7 A Occasionally I would become involved in  
8 loan participations if it involved a client that I  
9 had worked directly with, someone I was particularly  
10 familiar with; a loan that I had, for one reason or  
11 another, committed to handle. Generally speaking, I  
12 was not involved in loan participation.

13 Q With respect to this particular  
14 participation, after the participation was made, did  
15 you have any more involvement with it?

16 A Not that I recall.

17 Q You don't recall any communications with  
18 Mr. McDougal about it?

19 A No.

20 Q So you were off handling this \$20,000 loan  
21 to McDougal and Clinton, and then other people at the  
22 bank would have been involved in this participation,

1 even though it involved the same borrowers?

2 A Yes. But of course, in September of '80,  
3 the \$20,000 loan had been repaid at this point. And  
4 to reiterate, I do not have any specific recollection  
5 of knowing about this, or associating this loan with  
6 the other \$20,000 loan. Obviously the names are the  
7 same, but I can't -- I do not recall having known  
8 that at the time.

9 Q Now, going back to the \$20,000 loan, I  
10 think you told me you were aware that that was to be  
11 paid off by virtue of profits from lot sales; right?

12 A It was certainly assumed, if it did not  
13 specifically state it.

14 Q Now, when that loan had to be renewed and  
15 renewed again, was it your understanding that that  
16 meant that the sale of the property wasn't going  
17 well?

18 MR. IVEY: Which loan are we talking  
19 about?

20 MR. BARTOLOMUCCI: The \$20,000 loan.

21 THE WITNESS: Not necessarily, because  
22 normally the first mortgage loan would be repaid

1 first. And it was -- in the absence of having any  
2 clear understanding of the priority of how the  
3 payments would be made, I didn't have any specific  
4 knowledge of which loan was to be repaid first.

5 I think I certainly had reason to assume  
6 that it was not going well, the fact that the equity  
7 loan in the \$20,000 loan was not receiving any  
8 reductions.

9 Q You assumed that?

10 A Yes. And I think it was a reasonable  
11 assumption.

12 Q I think it might have been.

13 But you don't recall any communications  
14 with Mr. McDougal on that topic, about how the lot  
15 sales were going?

16 A I am certain that, in my pressing him for  
17 repayment of the loan, that my initial conversation  
18 would have been how are things going, and I feel  
19 certain that he likely indicated to me that sales  
20 were slow. Along this time frame, what really  
21 happened, and what was creating a problem, was a  
22 unique usury law in Arkansas, in that financial



1 institutions were able, through some federal  
2 overrides, to charge slightly higher than noninsured  
3 financial institutions.

4 And so they're taking the notes from the  
5 sale of these lots, they were capped at an artificial  
6 10 percent interest maximum, and that restricted  
7 their ability or incentive to really make loans. And  
8 they were borrowing money at something in excess of  
9 10 and loaning it back at 10, so it created an  
10 additional burden.

11 Q Now, are you familiar with this January '94  
12 Time magazine article that discusses a loan at Union  
13 Bank, which, the article attributes to you the  
14 statement that it was paid off with proceeds of a  
15 loan to McDougal and Tucker?

16 A I believe that was January of '94.

17 Q January of '94?

18 A Yes, I am familiar with it. Richard Behart  
19 or Behar.

20 Q I just wanted to make sure this was talking  
21 about the same thing that we were talking about. It  
22 says here that you made out a personal loan of

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1 roughly \$25,000 to Clinton and McDougal to help pay  
2 for the Whitewater acreage. That's referring to the  
3 \$20,000 earnest money loan that we have been  
4 discussing today; right?

5 A Yes.

6 Q And then when it says Denton recalls that  
7 within two years the Clinton debt was repaid with  
8 proceeds from an unrealed loan made by Union to both  
9 McDougal and Jim Guy Tucker.

10 That's the recollection you had about the  
11 loan involving the apartments?

12 A That's correct.

13 Q Have you ever seen Mrs. Clinton's name as  
14 the guarantor on the loan, guarantor or cosigner?

15 A I think that subject would be covered under  
16 the May 7th letter from Bates.

17 Q Are you saying this is a matter which would  
18 involve a Madison banking practice?

19 A Yes.

20 MR. IVEY: I thought the question was  
21 directed at these loans in particular. Were you  
22 addressing different loans, Chris?

1 MR. BARTOLOMUCCI: Let's go off the  
2 record.

3 (Discussion off the record.)

4 MR. BARTOLOMUCCI: Back on.

5 BY MR. BARTOLOMUCCI:

6 Q Have you ever seen Hillary Clinton's name  
7 as the guarantor on a loan which was not a Madison  
8 loan, a loan from a different bank?

9 A I would refer to the May 7th letter from  
10 Bates.

11 MR. IVEY: Chris --

12 MR. BARTOLOMUCCI: Okay. I will stop  
13 there. If the witness believes it goes to territory  
14 covered by the IC, then we will stop.

15 BY MR. BARTOLOMUCCI:

16 Q I will ask the question this way: Did  
17 Union Bank, to your knowledge, make any other  
18 Whitewater-related loans, other than the \$20,000 loan  
19 and the participation that we talked about?

20 A No.

21 Q So as far as you know, there weren't any  
22 other loans to McDougal --

1 A I think it is obvious, but let me qualify  
2 my answer: not that I recall or not to my knowledge  
3 while I was associated with Union Bank; that  
4 terminated in 1984.

5 Q Do you have any knowledge about  
6 Whitewater's purchase of land from the International  
7 Paper Company?

8 MR. IVEY: This would have been in what  
9 year, Chris?

10 MR. BARTOLOMUCCI: I didn't specify a year.

11 MR. IVEY: Let's go off the record.

12 (Discussion off the record.)

13 MR. BARTOLOMUCCI: After the discussion we  
14 have had off the record, I am going to drop that last  
15 line of inquiry, and turn your attention to a  
16 fundraiser that was held at Madison Guaranty on April  
17 4, 1985.

18 BY MR. BARTOLOMUCCI:

19 Q I think you testified that you came to  
20 Madison in April of '85; is that correct?

21 A Yes.

22 Q Do you know if you began working at Madison

1 prior to this fundraiser?

2 A I am of the opinion I began about the 13th  
3 or 15th of April. I don't have any records that  
4 would -- that I can locate to document that.

5 Q Did you attend this fundraiser?

6 A No.

7 Q In April of '85, did you make any  
8 contributions to Bill Clinton?

9 A Yes.

10 Q Can you describe the circumstances  
11 surrounding that contribution?

12 A I was approached by John Latham, and it was  
13 suggested that it would be appropriate if I make a  
14 financial contribution to the Clinton campaign.

15 Q He suggested it would be appropriate  
16 because of what?

17 A I don't recall him giving me any reason. I  
18 think the implied suggestion was the fact that he was  
19 asking should be sufficient. It was not particularly  
20 unique in my previous experience with financial  
21 institutions.

22 Q Latham was the CEO of Madison at the time?

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1 A Latham was the president.

2 Q President?

3 A I am not certain if he was CEO.

4 Q And did you --

5 A No one else functioned in that capacity, so  
6 he likely was.

7 Q Did he tell you that you would be  
8 reimbursed for your contribution?

9 A No.

10 Q Were you reimbursed for your contribution?

11 A I was compensated for it. I have been  
12 quoted as saying I was reimbursed. I was  
13 compensated. I will make a distinction.

14 Q How much was your contribution?

15 A I recall it to be \$500. I have been unable  
16 to locate a canceled check.

17 Q You recall writing a check?

18 A I specifically recall more observing the  
19 cancellation on the reverse side of the check, but I  
20 do recall the check and I am certain I wrote it. I  
21 just don't specifically recall writing the check, to  
22 answer your question specifically.

1 Q So you are sure that you didn't pay in  
2 cash?

3 A It would have been unlike me.

4 Q And I will tell you exactly why I bring  
5 this up. Because we have had documents, including  
6 checks, produced to us by the custodian of records  
7 for that campaign, and we didn't receive any check  
8 with your name on it. And I am just trying to figure  
9 out why that is.

10 A I understand that from some previous  
11 investigators, and I have no explanation. I am  
12 obviously working from recall. That would have been  
13 contrary to my previous experience as writing  
14 checks. Checks seemed to be the magic documents.  
15 Cash would not seem -- would not seem to have been as  
16 effective a form of contribution.

17 I can't respond to your lack of  
18 documentation, nor mine.

19 Q Do you recall who you made the check out  
20 to?

21 A Bill Clinton. I do not recall making it to  
22 the campaign. I am of the opinion that I made it to

1 Bill Clinton.

2 Q And did you give the check to John Latham?

3 A Yes.

4 Q With the understanding that he would pass  
5 it on to the appropriate parties?

6 A Yes.

7 Q Did you make it out the same day that he  
8 asked you, or was it sometime later?

9 A I'm certain it was the time that he asked  
10 me to do it. But I can't -- I don't think -- I can't  
11 tell of a reason for a delay. I don't recall  
12 thinking about it and doing it later, or anything in  
13 that regard.

14 Q Can you recall what day this was that you  
15 were asked to make a contribution?

16 A No.

17 Q Was it soon after you joined Madison  
18 Guaranty?

19 A I am of the opinion it was shortly upon --  
20 within days of my arrival at Madison.

21 Q So then it is safe to say it was April of  
22 '85?



1 A I feel -- I feel that that's my best  
2 recollection, it would have been April.

3 Q Now, get --

4 A At the latest, early May.

5 Q Given that we have no record of a check, I  
6 have to ask you, you are sure you made this \$500  
7 payment?

8 A No.

9 Q You wouldn't forget about paying somebody  
10 \$500 --

11 A A \$500 political contribution would have  
12 been my all-time high, and I doubt that I would have  
13 forgotten, or would have thought that I did it. I  
14 have no explanation.

15 Q Now, tell me about the compensation that  
16 you received.

17 A When I joined Madison, McDougal and I met  
18 with McDougal and Latham. I was asked what  
19 compensation I would require. I indicated that I  
20 would like a \$60,000 base salary, basically an  
21 unquestionable expense account within reason and  
22 legality, a \$500 a month automobile fee, and the

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1 normal benefit package of the financial institution.

2 McDougal ccuntered and indicated that that  
3 was all acceptable and agreeable, except that he  
4 would -- for some other financial structuring within  
5 the institution, other salary structures, he would  
6 make -- would want to do the salary at \$50,000 with  
7 the understanding that, through bonuses, I would be  
8 receiving a minimum of 60,000. And that was a verbal  
9 understanding.

10 Q Now, how does that relate to your \$500  
11 contribution to Bill Clinton?

12 A That had no direct relationship, other than  
13 I considered my contribution as a cost of doing  
14 business.

15 Q I guess my question was, or is, did you  
16 have an understanding with either Mr. McDougal or  
17 Mr. Latham, or anyone else at Madison Guaranty, that  
18 if you made this contribution, that you would be --

19 A Reimbursed?

20 Q -- reimbursed?

21 A No. There was no -- I didn't charge an  
22 expense account or any increments thereof. My

1 expenses were all -- I was not questioned on the  
2 entertainment that I did, nor the expenses incurred,  
3 but they were all legitimate financial entertainment  
4 of clients, business travel, et cetera. And there  
5 were no lump sum amounts for miscellaneous items.

6 I was not reimbursed. I considered myself  
7 compensated.

8 Q What you are telling me is you paid the  
9 \$500, and you felt like that was part of the cost of  
10 obtaining your total compensation package?

11 A Right.

12 I knew myself to be associated with a  
13 politically active organization, to -- I had been  
14 that way for a number of years and understood the  
15 cost of that arrangement.

16 Q Are you aware whether Mr. McDougal was  
17 promised or given anything by Bill Clinton in  
18 exchange for the fundraiser?

19 A No, I doubt very seriously that he was.

20 Q Why do you doubt that?

21 A Just the way -- just wasn't the way you did  
22 business.

1 Q What was the way you did business?

2 A You, on a continuing basis, you  
3 accommodated each other.

4 Q By accommodation, do you mean do favors?

5 A Yes. Accommodate through financial,  
6 political considerations. I was aware that the state  
7 had a -- the building that McDougal owned had a very  
8 unusual state contract there, it was certainly not  
9 consistent with any similar type arrangements. And  
10 it appeared fairly obvious the reason for that being  
11 there was -- not necessarily derogatory, it was a  
12 rundown area of town and McDougal had made a  
13 commitment to restore that part of town, that  
14 particular Main Street district and frankly got very  
15 little help from anybody else. So I thought it was a  
16 pretty good gesture and appreciated that the state  
17 accommodated that endeavor.

18 Q Are you talking here about the contract  
19 that Madison had to lease space to the Arkansas  
20 Development Finance Authority?

21 A I am really of the opinion that was  
22 something like the Arkansas Housing Development

1 Authority at the time. I think there may have been a  
2 name change. I think it was the Housing Authority at  
3 the time.

4 Q That was the predecessor to ADFA; correct?

5 A That's my best recollection, yes.

6 Q And why are you connecting the lease to  
7 that state agency and the fundraiser?

8 A Well, local media has done that recently;  
9 there has been some speculation in that regard. And  
10 I think it is probably the most obvious one that I  
11 observed as an observer, 10 years ago.

12 I was rather stunned to find a state office  
13 located in that building when I went down there to  
14 interview McDougal. I kind of chuckled to myself,  
15 frankly.

16 Q Did McDougal ever tell you there was a  
17 connection between the fundraiser --

18 A Didn't have to. The letters were in gold  
19 letters on the glass door.

20 Q So you think it was just obvious that the  
21 one exchanged from the other?

22 A Stood out like a beacon at night.

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1 Q The Committee has a memorandum which has  
2 the identifier "fundraiser 18" on it. The memo  
3 reflects a conversation that one Greg Hopkins had  
4 with Pat Heritage of Madison Guaranty. And in the  
5 memo, it says "Mr. Hopkins stated that a portion of  
6 the loan proceeds made to Dixie Continental Leasing  
7 went to Bill Clinton's campaign, and that in return  
8 for the substantial campaign contribution, Bill  
9 Clinton assured Jim McDougal that a state agency  
10 would lease space from Madison at its headquarters on  
11 Main Street in Little Rock."

12 Do you have any personal knowledge as to  
13 whether that is in fact what happened?

14 A Well, that confuses me. I have never seen  
15 that memorandum but the state agency was there when  
16 I -- and in place when I went to Madison. And the  
17 Dixie Continental Leasing loan was made like April  
18 3rd of '85. And the Arkansas Housing Authority  
19 lease, they were already in the building at that  
20 time. And there certainly could have been another  
21 loan to Dixie Continental Leasing.

22 Q Or there could have been another lease or

1 lease renewal?

2 A Both are accurate. I am not aware of  
3 another lease, another tenant other than the Housing  
4 Authority.

5 I specifically recall Dixie Continental  
6 Leasing because it was a very questionable loan that  
7 was -- had just been booked when I went with  
8 Madison.

9 Q But you don't have any knowledge about the  
10 proceeds of that loan being diverted to the Clinton  
11 campaign?

12 A No. No.

13 Q Do you know who the principals in Dixie  
14 Continental Leasing were?

15 A Yes, Artie Randolph.

16 Q Is it possible it could have been Charles  
17 Peacock rather than Artie Randolph?

18 A I'm sorry. I'm sorry. That's erroneous.

19 Q It was Charles Peacock, not Artie Randolph?

20 A Yes, I know him as Charlie Peacock. Pardon  
21 me.

22 MR. BARTOLOMUCCI: Let's pause for one

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1 second.

2 (Discussion off the record.)

3 BY MR. BARTOLOMUCCI:

4 Q Do you know Greg Hopkins?

5 A Yes.

6 Q I have a copy of --

7 MR. IVEY: Where do you know Greg Hopkins  
8 from?

9 THE WITNESS: He beat me severely on a  
10 lawsuit, counsel for the opposition.

11 BY MR. BARTOLOMUCCI:

12 Q Did he do some work for Madison?

13 A He represented Peacock, and he also did  
14 work for Madison. He handled some foreclosures,  
15 he -- he handled -- the interesting foreclosure, he  
16 handled a foreclosure on a defunct builder and then  
17 bought the house. Don't investigate that.

18 MR. IVEY: Do you know him only through  
19 your connection with Madison?

20 THE WITNESS: No. I first became  
21 acquainted with Mark -- I mean with Greg --

22 MR. IVEY: Can we go off the record for a



1 second.

2 (Discussion off the record.)

3 MR. BARTOLOMUCCI: Let's go back on.

4 BY MR. BARTOLOMUCCI:

5 Q In April of 1994, you had an interview with  
6 some RTC investigators?

7 A Probably.

8 Q Or fellows named Chuck Patterson, Gary  
9 Davidson?

10 A Madison & Sutro.

11 Q They are from Pillsbury, Madison & Sutro,  
12 working for the RTC.

13 A Right.

14 Q Did you tell them that an attorney by the  
15 name of Hopkins handled some loan documentation work?

16 A Yes, he did, and I am certain I did, I did  
17 tell them that.

18 Q This would be the same Greg Hopkins?

19 A Yes, Greg represented Peacock, and as a  
20 result of that, also did some work for Madison.

21 Q Would Mr. Hopkins be in a position to know  
22 what happened to the loan proceeds of the loan made

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1 to Dixie Continental Leasing?

2 A Only if his client told him.

3 Q Well, would the work that he did for  
4 Madison have --

5 A No, he would have -- in my opinion, he  
6 would have obtained that information from Peacock.

7 MR. IVEY: And the document you are reading  
8 from, SEN 21634?

9 MR. BARTOLOMUCCI: That's right.

10 I think that's all I have for you right  
11 now. Our normal procedure would be to let Mr. Ivey  
12 conduct some questioning, and then if necessary, we  
13 will have follow-up.

14 EXAMINATION

15 BY MR. IVEY:

16 Q Good afternoon. I will go back through  
17 some of the areas Mr. Bartolomucci questioned you  
18 about earlier, because I wanted to get some  
19 additional information with respect to things.

20 In particular, there were some points where  
21 the questions called for to you speculate, and I  
22 wanted to make sure that I am clear as to what parts

1 of your answers were speculation and what parts were  
2 based on your direct knowledge; okay?

3 A Okay.

4 Q We just finished up talking about the  
5 fundraiser. I think at one point you said that, when  
6 you were asked about the loan proceeds with respect  
7 to the Dixie Continental loan, you said that you had  
8 no direct knowledge about whether any of that money  
9 went to the Clinton campaign?

10 A No. I had no direct knowledge.

11 Q Okay. And I think Mr. Bartolomucci then  
12 asked you a question about -- or it could have been  
13 another lease, he asked you a series of hypotheticals  
14 that came after that question.

15 And I just wanted to be clear that when you  
16 said you have no direct knowledge about what happened  
17 with the proceeds there, that includes everything  
18 with respect to the Dixie Continental loan proceeds.  
19 You don't have any idea whether they went to the  
20 Clinton campaign, or if there was any type of  
21 arrangement for them to go to the Clinton campaign,  
22 or anything like that; is that correct?

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1 A That's accurate.

2 Q With respect to the testimony about the  
3 state agency, at McDougal's office, you testified  
4 that -- well, let me actually back up even further.

5 You testified that you made a contribution  
6 at the April 1985 fundraiser for Mr. Clinton that was  
7 held at Madison Guaranty headquarters?

8 A No, I testify that I made a contribution to  
9 Bill Clinton's campaign. I don't recall if -- I am  
10 almost certain it was not at that function because I  
11 do not believe I was associated with Madison at the  
12 time, and did not attend that function. It was  
13 within the same time frame, however; probably late  
14 April, early May of that same year.

15 Q And your contribution was generated by the,  
16 quote unquote, suggestion by John Latham that that  
17 contribution would be appropriate?

18 A Yes.

19 Q And your testimony was also that you made  
20 the contribution, you made a \$500 contribution to the  
21 Clinton campaign?

22 A Yes. That's -- I hesitate because no

1 documentation can be located. That's my best memory  
2 that I do recall.

3 Q Yes, sir, and we --

4 A And I also attempted but did not have those  
5 records.

6 Q And we understand this is over a decade  
7 ago, so there has been a good deal of time lapsed  
8 between now and then.

9 But I do want to make sure I was clear on  
10 one thing. You testified that you were not  
11 reimbursed for the contribution you made; correct --

12 A Yes.

13 Q -- but that you were compensated?

14 And you said that the compensation was  
15 based on the fact that you received a \$60,000 salary,  
16 and benefits and an expense account. And the reason  
17 you received that, though, was not because you made  
18 the \$500 contribution; is that fair?

19 A I received a \$50,000 salary, and I received  
20 an expense account and compensation for an  
21 automobile, and I accepted that arrangement. Shortly  
22 thereafter, I was asked to make a \$500 contribution,

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1 and I considered that a cost of doing business, and  
2 made that contribution.

3 Q Okay.

4 A So in that context, I considered that being  
5 compensated for my \$500. Now, maybe that's a poor  
6 choice of words, but in my mind, that's what I  
7 considered.

8 Q All right, so you had a conversation with  
9 McDougal in which he negotiated a salary and your  
10 benefits package?

11 A McDougal and Latham, jointly.

12 Q They were both there?

13 A Yes.

14 Q That was in April of 1985?

15 A That was the day before I began work there.

16 Q The day before?

17 A I am not sure what day that was.

18 Q And there was agreement reached on that  
19 compensation package?

20 A Yes.

21 Q Was it during that same day, during that  
22 same conversation?

1 A All this occurred within a 30-minute  
2 meeting.

3 Q Okay. So the 30-minute meeting ends, and  
4 you started to work the next day?

5 A As I recall, the meeting was in the  
6 afternoon and I began work the next morning.

7 Q At some point subsequent to that,  
8 Mr. Latham came to you and made the strong suggestion  
9 about giving a contribution to the Clinton campaign?

10 A I think you put the emphasis in the word  
11 "strong." It was a suggestion. It was certainly  
12 not intimidating or threatening, but I interpreted it  
13 as being a real and sincere request for me to  
14 contribute. There was no misunderstanding I was to  
15 contribute.

16 Q So it was not an intimidating suggestion  
17 but it was truly a suggestion?

18 A Yes.

19 Q Okay. And how long after you had started  
20 work did Mr. Latham -- how long after you had started  
21 work was it before Mr. Latham approached you?

22 A Again, I don't recall. I don't know

1 specifically when I began work there. And my best  
2 recollection, 10 or 11 years later, is that it was  
3 late April or perhaps even early May when that  
4 occurred.

5 Q Okay. So it definitely wasn't the same day  
6 on which you negotiated your compensation?

7 A No. As I recall, there were several  
8 days -- I was -- I can visualize I was sitting in the  
9 office and I recall the day I went to work there,  
10 Latham occupied that office. During the course of a  
11 day or two, he moved out of that area, out of this  
12 particular office. I moved into that office, and  
13 sometime later, I recall having the conversation in  
14 that office, and I was behind the desk, so I am of  
15 the opinion that I had moved in, into his old  
16 office.

17 Q So, there was -- enough time had passed for  
18 you to get settled into the office before Mr. Latham  
19 came and asked you to make a contribution?

20 A That's what I recall, yes.

21 Q So I think you also testified that you  
22 didn't feel that this -- the request for the



1 compensation was any type of a quid pro quo, with  
2 respect to --

3 A No, no, I didn't. And my earlier response,  
4 I had become accustomed to that. It was part of the  
5 job.

6 Q Accustomed to being approached for  
7 political contributions?

8 A It was part of the job.

9 Q Now, you also made some comments about  
10 whether you thought Mr. McDougal had been promised  
11 anything by Mr. Clinton apparently in exchange for  
12 the campaign contributions. And I think your  
13 testimony was that you doubt that McDougal was  
14 promised anything, that things weren't done that way?

15 A Yes. And that is speculation. I certainly  
16 have no firsthand knowledge.

17 Q There are some additional points there.  
18 There are comments you made after that, that I also  
19 wanted to follow up on, to what extent you have  
20 direct knowledge about them.

21 You also said with respect to this  
22 accommodation issue that, when you went to an

1 interview at Mr. McDougal's office, there was a state  
2 agency that was leasing space at Madison Guaranty's  
3 office. Do you recall that?

4 A Yes.

5 Q Okay. And your direct knowledge of that  
6 lease arrangement would be what?

7 A I observed their name on the marquee out in  
8 front, in the lobby.

9 Q You saw that they were in the building?

10 A Right.

11 Q Do you have any firsthand knowledge about  
12 the leasing arrangements or negotiations that took  
13 place with respect to that space?

14 A Absolutely none. My knowledge was limited  
15 to the extent that I observed that they were located  
16 there.

17 Q So whether there was -- whether leasing the  
18 space made sense for that state agency, whether there  
19 had been any type of competitive process, or what  
20 type of selection process there may have been for  
21 this space, you are not privy to any of that  
22 information?

1 A No.

2 Q Mr. Bartolomucci asked you about a January  
3 '94 Time magazine article in which I think it quoted  
4 you or cited you discussing how a loan was paid off,  
5 the Union Bank loan. And I believe the claim was the  
6 Union Bank loan was paid off by diverting loan  
7 proceeds from a Tucker/McDougal venture or loan?

8 A Yes.

9 Q That was the statement that you made in  
10 Time magazine, that you suspected that?

11 A Yes.

12 Q Now, I think you also testified earlier now  
13 that your understanding at this point is that there  
14 is no -- there is no evidence, there is no  
15 documentation that supports that?

16 A Well, I certainly don't have access to the  
17 evidence. I am told and I have read that my  
18 recollection is incorrect, that there is some  
19 evidence that there was a loan granted by the Bank of  
20 Cherry Valley to generate the payoff of the Union  
21 Bank loan.

22 Q But you don't really have any knowledge

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1 about -- well, do you have knowledge about how the  
2 loan was paid off?

3 A No. Well, I have some knowledge, because I  
4 was pressuring McDougal to repay that loan, and he --  
5 he accomplished what I was pressuring him to do, so,  
6 to that extent, I have that knowledge.

7 Q You know that he paid the loan?

8 A The source of it, that payoff, for some  
9 reason at the time I concluded or was told that it  
10 came from the Tucker/McDougal loan. I am now told  
11 that I perhaps was in error in that assumption.

12 Q With respect to the refinancing of the  
13 loan, you just mentioned that you began pressing  
14 Mr. McDougal for principal reduction and to pay off  
15 the loan after -- I guess it was after the renewal in  
16 1979, the first renewal in 179?

17 A Normal practice, single-pay note without  
18 scheduled repayment, after a year, I would have begun  
19 to press for reductions, or a scheduled plan for  
20 repayment.

21 Q One-year note, demandable note, I guess  
22 that was par for the course in Arkansas during that

1 period?

2 A Yes, when the borrower didn't have any  
3 source to repay a loan, you typically set it up for a  
4 one-year maturity.

5 Q Was the one-year maturity also connected  
6 with the issue of the usury laws?

7 A No, it had no relationship.

8 Q What measures were taken to address the  
9 usury loan issue by Union National Bank?

10 A There was some legislative action on a  
11 state basis, or a couple of constitutional  
12 referendums attempted -- there was some public  
13 support but about the time it came up for vote,  
14 interest rates would have gone back down and so the  
15 public wouldn't even consider it a particular  
16 problem. So the local level never really was  
17 affected.

18 Eventually, there were some federal  
19 override provisions. The Garn-St. Germaine Act, that  
20 was a federal override that tied to Federal discount  
21 interest rates. It overrode state usury laws and  
22 there was a 5 percent spread over discount rate.

1 Q That was 1982, if I recall?

2 A Yes, there was an interim act prior to  
3 Garn-St. Germaine, and I don't recall the title of  
4 that legislation, but there was some efforts that  
5 went on on an ongoing basis. And ultimately, the  
6 state passed a constitutional amendment that  
7 structured a rate arrangement based on a federal  
8 discount rate plus an override, 5 percent spread over  
9 discount rate. That never really solved the problem  
10 because even it was inadequate but there was some  
11 relief along those periods and --

12 Q Prior to this legislation, such as in 1978  
13 and 1979, were there any methods the bank used to  
14 address the usury issue?

15 A I have to address this under oath, huh?

16 A typical technique to rely on,  
17 compensating analysis, in connection with the  
18 granting of credit. It would be tied arrangements,  
19 informal tied arrangements, where the lender would,  
20 through morale persuasion or suggestion, would  
21 require that the borrower place a certain amount of  
22 moneys on deposit with that institution, and in turn,

1 that institution then would loan X number of dollars  
2 to that borrower.

3 The net effect, if you put \$20,000 on  
4 deposit with the bank and borrowed \$100,000, and you  
5 paid 10 percent interest, you would be paying 10  
6 percent of \$100,000 or \$10,000 interest. But the  
7 bank would only have to come up with \$80,000 because  
8 they loaned you this 100,000; they would take your 20  
9 plus 80 of theirs, they still collect \$10,000 on  
10 \$80,000 worth of inventory. So the effect of your  
11 return would be greater than 10 percent. That was  
12 one technique, pretty widespread, used pretty  
13 effectively.

14 Q What about the interest rate during that  
15 period, 1978, 1979? You talked about the range?

16 A I am sure I have known in the past. I  
17 don't recall now.

18 Q Just taking a look?

19 A The lowest rate on those notes was 10; I  
20 noticed one of them was 13. So obviously there was  
21 some override in effect there that those could have  
22 escalated on up to 13.

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1 Q I am looking at the June 13, 1978  
2 promissory note, DKRT 900145. It has a 10 percent  
3 interest rate, and it does appear that the interest  
4 rates did go up in the subsequent promissory notes,  
5 the renewals, that you signed. That would have been  
6 consistent with some sort of federal override?

7 A Right.

8 Q Was this interest rate, to your  
9 recollection, consistent with the going rate? Do you  
10 have any recollection of any special interest rates  
11 being given to this loan?

12 A Mr. Ivey, typically those kinds of loans  
13 were given at preferential rates. That was  
14 concealed -- or obstructed, I guess, during high  
15 interest rates. If the national prime were 15 and  
16 you loaned money at 10, that may or may not be a  
17 preferential rate. It could effectively be.

18 The greatest rate you could get is the  
19 legal maximum, so I just don't know what the  
20 maximum -- the baseline would have been the national  
21 prime, and I do not recall what that was in 1978.

22 Q Okay. So you are speaking to the



1 distortion that the usury laws had on the interest  
2 rates with respect to these types of loans?

3 A Yes, sir.

4 Q And as far as a recollection of what the  
5 interest rates would have been, you are saying you  
6 are not clear?

7 A I just don't recall what the relationship  
8 between the Arkansas and national rates were at those  
9 particular times.

10 Q Now, I noticed in looking through these  
11 renewals that you had a couple that went on shorter  
12 intervals, 90-day intervals looks like, September  
13 1979, December 1979. And then there is a six-month  
14 interval between December 1979 and June 1980.

15 Do you recall why you went from two 90-day  
16 renewals to a six-month renewal?

17 A My impression was, after the one-year note,  
18 I became concerned about the absence of repayment. I  
19 began to place it on shorter maturity so I would be  
20 revisiting the loan and looking at it on a more  
21 frequent basis. Very likely that last extension that  
22 was made on the six-month basis, either I had some

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1 commitment from McDougal, or there was some plan as  
2 to something would occur within six months.

3 I do not specifically remember, but that  
4 appears to be inconsistent from the trend that I  
5 established after the first one-year note. But it  
6 likely was based or structured around some  
7 commitment. I can almost hear McDougal saying well,  
8 I will commit to have that moved in six months.

9 Q But you can't recall specifically?

10 A No, but that's very likely, and occurred  
11 many times.

12 Q And part of the reason --

13 A Desirably, a loan maturity is structured  
14 around the generation of the funds to repay it. And  
15 that's --

16 Q Part of the reason you were -- there was an  
17 interest in paying off this loan because McDougal was  
18 interested in a different loan with respect to the  
19 Bank of Kingston; is that what you testified to?

20 A Well, you really had three -- two  
21 motivators; the third would have been the Bank of  
22 Kingston. One is the loan was stagnant. It had some

1 age on it, the one-year loan without any reduction,  
2 so it then became an undesirable loan from the bank's  
3 standpoint. It became a target from the regulatory  
4 entities.

5 As a matter of fact, the national bank  
6 examiners did criticize that loan in late '79 or  
7 '80. It was not a big deal, but I do remember  
8 specifically that it was criticized.

9 And so there was some -- because of those  
10 reasons, in addition, I wanted the loan paid off.  
11 And that's the reason I began to negotiate and  
12 encourage McDougal to repay the loan. And then when  
13 he came back with the new plan of the Bank of  
14 Kingston, I said McDougal, you've got a stagnant loan  
15 with your \$20,000 transaction, you are involved with  
16 the Tucker/McDougal loan on the apartment/condo  
17 conversion that's off course, not going as planned,  
18 so you've really got two problems with me now. We  
19 won't even consider the Bank of Kingston loan until  
20 you clean up these other two problems.

21 Q What was the ballpark amount of the Bank of  
22 Kingston loan?

1 A 350,000.

2 Q All right, so you had specific concerns  
3 about the two loans you just discussed. But I take  
4 it you didn't have overall concern with  
5 Mr. McDougal's creditworthiness?

6 A Well, every borrower, be it corporate or  
7 individual entity, has thresholds at which they are  
8 entitled to credit, so McDougal --

9 Q I guess the point I am trying to get at and  
10 I want to understand your thinking on this, is that  
11 you had concern at this point about the \$20,000 loan  
12 and this apartment loan. And yet you were willing  
13 to, you know, if those two loans were paid off, or  
14 moved to another institution, to loan \$350,000 to  
15 purchase a bank?

16 A Well, I make the distinction of moving it  
17 to another financial institution. That doesn't  
18 really solve his problem; it solves my problem; it  
19 solves the lender's problem. I would prefer it be  
20 paid off with liquidation of the project and/or other  
21 revenue sources. As a secondary source, I will  
22 prefer it to be moved. It is not my problem; it is

1 somebody else's.

2 I think I -- I think I suspect where you  
3 are heading then. If you are concerned about two  
4 relatively small loans, why did you turn around and  
5 loan him \$350,000.

6 Q That is my question.

7 A Well, in those days, the controlling  
8 interest in a bank had incredible value. I mean,  
9 banks just historically sell, almost every time sell  
10 for greater than the last time unless you get in  
11 there and mess it up, which unfortunately is what  
12 McDougal did. But we had no idea he would be doing  
13 that at the time.

14 So the license to operate a commercial bank  
15 has a great deal of value. And so a bank stock  
16 control loan is a considered a golden calf; it is a  
17 good piece of collateral. The extreme I would make  
18 between those is an unsecured loan, and a \$1 million  
19 loan secured by United States Treasury notes, the par  
20 value or the market value greater than the loan  
21 amount.

22 Yes, it is a big loan but it is a great

1 loan when it is secured by Treasury notes. A \$20,000  
2 unsecured loan could be much, much inferior even  
3 though it is drastically smaller.

4 Q And I take it you didn't have any concerns  
5 with respect to McDougal having the business and  
6 financial wherewithal to handle this transaction?

7 A Which one?

8 Q The Bank of Kingston.

9 A Yes. And I'm somewhat influenced, with the  
10 benefit of hindsight, but McDougal had no banking  
11 experience. I was under the impression at the time  
12 that McDougal was going to be more of a passive  
13 investor in the Bank of Kingston, as opposed to  
14 getting in there and making a lot of loans himself  
15 and making credit decisions.

16 Gary Bunch who was formerly involved with  
17 the bank and was there actively, knew the people of  
18 the community, and was a good banker, it was his  
19 family that sold the bank to McDougal, and Bunch was  
20 going to remain with the bank. So I took some  
21 comfort in that.

22 Unfortunately, we misevaluated McDougal's

1 influence on running the bank after he bought it.

2 Q Okay, but I guess -- I am not asking you to  
3 look back in hindsight, and be critical of the  
4 decision that was made.

5 A I am not offended by that, either.

6 Q I do want to understand, though, what your  
7 view of McDougal was at the time. I mean, you had  
8 concerns about him paying off the loans but it seems,  
9 given the comforts you had with continuing the  
10 relationship between him and the bank, in the loan  
11 capacity, in a significant loan, that you had still  
12 some confidence in his business abilities.

13 A At that stage of my banking career, I have  
14 never seen a bank -- as a lender and as a regulator,  
15 I have never seen a bank stock control loan get in  
16 trouble and cost a bank money. I mean, typically the  
17 worst that can happen is the bank would get into such  
18 a state that the banker could not get enough money  
19 out of it to repay his indebtedness and he would have  
20 to just finally give up, sell the bank to somebody  
21 else, greater fool concept, put the profit in his  
22 pocket and go to Europe.

1 That's what happened when one failed. I  
2 mean, that's what happened in the marketplace. Now,  
3 things have changed in a decade, but that was  
4 generally the concept in those times. So having  
5 controlling interest in a bank was a very desirable  
6 piece of collateral.

7 I mean, Union Bank loved to make bank stock  
8 loans, almost to anybody, and the worst that could  
9 happen is the borrower would make a profit, or the  
10 bank itself would take it over, and then we would  
11 have a new branch. That happened many times.

12 Q So you had -- do you have an opinion at  
13 this point, or do you have a recollection at this  
14 point, of what your opinion of the business abilities  
15 of Jim McDougal were at the time of this loan?

16 A Jim was an excellent dirt dealer. And a  
17 dirt dealer, by my description, is one who buys cheap  
18 land, promotes it; typical example, buys land for  
19 \$100 an acre and sells it for \$600 an acre and makes  
20 a lot of profit.

21 Jim was an excellent businessman in that  
22 business. As a businessman in the banking business,



1 he was a miserable failure.

2 Q But you didn't know that at the time?

3 A Didn't know that at the time. And the Bank  
4 of Kingston was in a very rural community. The  
5 population of the town was 250 or 300 people. It was  
6 up in the hills and very few people around, so it was  
7 all cheap dirt. It was just a mecca of what Jim had  
8 done repeatedly with Senator Fulbright. It was  
9 thousands and thousands and thousands of acres of  
10 this kind of land all around. Then you would have  
11 Jim in the middle controlling a bank, so he was in  
12 essence a banker in a market of the product that he  
13 succeeded well in in the past.

14 Q So he had a bank in a region that was ripe  
15 for real estate development?

16 A Well, that's exaggeration, "ripe." There  
17 were no great -- there were no lakes and rivers and  
18 whatever, but there was this cheap dirt, and one of  
19 the old-timers up there, I remember particularly I  
20 was commenting on the beauty of a hill outside his  
21 small town there. And I said, Mr. Anderson, what  
22 does this land sell for, and he said \$100 an acre. I

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1 said what is the land good for, Mr. Anderson? You  
2 can't do anything with it. You can't raise cattle on  
3 it, you can't raise corn, you can't build houses on  
4 it, what's it good for? He said it is good for  
5 planting Yankees on.

6 The point is a lot of northerners would  
7 come down and buy this land, retirees buy it. It was  
8 dirt cheap compared to the land they had lived on and  
9 whatever in their previous places of employment.  
10 They put cash down, Jim would take a big note for  
11 them, and many of them repaid it in full.

12 Q Okay. Now, I note also that you went to  
13 work for Mr. McDougal, it would have been about five  
14 years after this; is that correct, at Madison  
15 Guaranty?

16 A That's correct. I would have gone to work  
17 for anybody that would hire me. I was unemployed and  
18 needed a job.

19 Q So at that point, without talking about the  
20 internal operations of Madison Guaranty, McDougal was  
21 just a port in a storm. I mean, you had no view  
22 about whether it was a good move for you to go to

1 Madison Guaranty, or whether you thought he was going  
2 to do a good job there, or anything of that sort.

3 A I didn't understand part of your question,  
4 there was two words I didn't understand.

5 Q Port in a storm; is that the part?

6 A Port in a storm, okay.

7 Yes, there is truth to that. It wasn't an  
8 act of desperation on my part, I don't want to  
9 mislead you. I needed a job, and as I recall, I was  
10 unemployed and I had been working as a consultant, as  
11 an unemployed person, or in my case it was.

12 I knew Jim was reckless, I knew Jim was  
13 expansive. I thought I could control him to some  
14 extent. I thought I would be a good influence on his  
15 operation of his institution.

16 And he was getting a lot of attention, he  
17 was growing very rapidly. I thought it was an  
18 extremely clever move that he had slipped into the  
19 Little Rock market with an out-of-town S&L. Properly  
20 handled, it could have been very successful and it  
21 could have been a very good position for me  
22 ultimately; miscalculation, but it could have been.

1 So it wasn't a totally reckless move on my part,  
2 miscalculated, but not reckless.

3 Q Okay. Now, with respect to the loan  
4 repayment issue, you testified that you dealt with  
5 Mr. McDougal with respect to sort of the contact  
6 about pressuring him to get the loan paid off, and  
7 potentially discussing some sort of commitment with  
8 McDougal to get the loan paid off --

9 A The \$20,000 loan.

10 Q Yes, the \$20,000 loan --

11 A Yes.

12 Q -- that was all with Mr. McDougal?

13 A Yes, I never had any conversation with Bill  
14 Clinton.

15 Q Now with respect to your initial contact  
16 with Mr. McDougal, you said you were told by an  
17 emissary of Mr. McAdams that you were to make a loan  
18 to Mr. McDougal?

19 A To McDougal and Bill Clinton.

20 Q To McDougal and Bill Clinton, all right.  
21 Prior to that time, the bank had made, I think you  
22 said, 10 to 15 loans to McDougal jointly with

1 Fulbright?

2 A A number, and I speculated on the number,  
3 in the range of 10 to 15 was speculation. Several.

4 Q And you also at one point said that, I  
5 think you said that all politicians got unsecured  
6 loans.

7 A I don't recall saying "all." I said many  
8 did. I might have said most. I certainly can be  
9 corrected.

10 Q Well, what I wrote down, "I thought all  
11 politicians received unsecured loans,"?

12 A That was a sarcastic remark and should be  
13 noted as such.

14 Q Okay.

15 A Yes.

16 Q So with respect to the Fulbright loans, do  
17 you recall if any of those were unsecured?

18 A They were all unsecured.

19 Q Are those loans that you handled  
20 personally?

21 A Yes.

22 Q Were these all loans that were made via

1 some contact from Mr. McAdams?

2 A The initial loan to McDougal and Fulbright  
3 was directed to me, and I had a personal conversation  
4 with Herbert McAdams instructing me to do that loan.  
5 I had no reservations or problems with doing that  
6 because I knew of the Senator's net worth.

7 After discussing -- after having some  
8 conversations both with Senator Fulbright and  
9 McDougal, and then certainly as the years passed and  
10 having experience with the various loans, I had no  
11 reservations; and no one ever, as I recall, no one,  
12 after the first one, ever told me to do any others  
13 that were jointly made with Senator Fulbright.

14 Q So that means you were making these loans  
15 under your own volition?

16 A Initiative, yes.

17 Q I think your testimony was that these loans  
18 that Mr. McDougal and Mr. Fulbright had with the bank  
19 were all paid off; was that right?

20 A Yes.

21 Q Your experience with Mr. McDougal in these  
22 loans was not problematic, I take it?

1 A Very satisfactory.

2 Q Now, with respect to the loan that the bank  
3 made to Mr. Clinton and Mr. McDougal together, that  
4 would have been after you had had several years of  
5 experience with the McDougal/Fulbright loans?

6 A Correct.

7 Q You mentioned you had an understanding of  
8 Mr. McDougal's net worth at that point. What was  
9 your understanding of what his net worth would have  
10 been at the point that the Clinton/McDougal loan was  
11 made?

12 A I don't recall saying that I had an  
13 understanding of his net worth. I am sure I had the  
14 benefit of financial statements. I recall McDougal  
15 supplied statements to me regularly. It was modest.  
16 The numbers, as I recall, were ultimately worked up  
17 to a half million dollars or so, but I took that with  
18 a grain of salt because typically that would have  
19 been the estimated value of some of his real estate  
20 projects, and very likely the payoff balance of those  
21 notes that he received from the sale of lots, so it  
22 was a dubious net worth number.

1 Q Did you feel it was sufficient to support  
2 the \$20,000 loan?

3 A Probably not at that time, not in 1978.

4 Q What net worth would have sufficiently  
5 supported the \$20,000 loan?

6 A Depends on what the assets were based on  
7 the net worth. The absolute number of the net worth  
8 would have very little meaning. If you had a million  
9 dollars' worth of purple rocks or a million dollars'  
10 worth of gold, it would have considerably different  
11 values. I would evaluate one as much stronger than  
12 the million dollars worth of rocks.

13 Q So, was there --

14 A Unless they were diamond rocks.

15 Q Was there any type of rule of thumb that  
16 the bank had with respect to these types of loans?

17 A No.

18 Q 10 percent of net worth or anything like  
19 that?

20 A No, no. It is just too vague a number, too  
21 arbitrary, because net worth is in the eyes of the  
22 beholder. So it requires an evaluation of the



1 quality of the assets to put any standard on what an  
2 absolute net worth would be. If you got into  
3 corporate audited financial statements where the  
4 audit process verifies the value of assets, they go  
5 through generally accepted accounting principles, and  
6 here is some audit procedure and verification of  
7 assets, then you come closer to evaluating true  
8 meaning of net worth.

9 But on an individual's financial statement,  
10 net worth is a pretty arbitrary number. You have to  
11 evaluate each of the assets to see how they are  
12 valued and what the ultimate true value of the asset  
13 might be.

14 Q Do you recall taking those types of steps  
15 with respect to Mr. McDougal?

16 A Yes.

17 Q What types of steps did you take? What did  
18 you look at with respect to Mr. McDougal's net  
19 worth?

20 A McDougal would buy a piece of land for \$100  
21 an acre. He would sell a third of it for \$600 an  
22 acre. He would put the balance of it on his

1 financial statement for \$400 an acre. Remember, he  
2 bought it earlier at a hundred, he sold some for 600  
3 so he puts it on his financial statement at 400. He  
4 can argue hey, I've got some experience selling at  
5 600, surely it is worth 4.

6 I am saying on a cost basis, he only paid a  
7 hundred for it, how can it be worth 400 now. So you  
8 get into a balancing act in evaluating what it is  
9 truly worth.

10 He buys \$100 piece of land, sells it for  
11 \$600 an acre; he gets \$100 down and takes a note for  
12 \$500. So he has then a \$500 asset on his financial  
13 statement for that note receivable. It is only worth  
14 \$500 after it is ultimately repaid. So, you know, is  
15 it truly worth \$500 or not?

16 One has to evaluate how good those assets  
17 are, and usually the proof of the pudding is after it  
18 is too late, after the fact when you are trying to  
19 evaluate it.

20 Q I guess it is not clear to me then how you  
21 would figure out in advance the accuracy of the net  
22 worth evaluation, or would you do that?

1       A    You make an attempt. I don't think you  
2 ever come to a concrete solution. There is never an  
3 absolute right or an absolute wrong. You make an  
4 evaluation in your best judgment, this net worth is  
5 real or this net worth is exaggerated. Many times as  
6 a regulator, I have said this man has a net worth of  
7 \$3 million but I consider it to be highly  
8 exaggerated. But he has three old Jersey cows worth  
9 \$870,000 and anybody knows three Jersey cows aren't  
10 worth \$870,000.

11       Q    Unless you are from Jersey.

12       A    No offense.

13       Q    Let me go back to your example, bought it  
14 for \$100, sold it for \$600, therefore gives an  
15 estimate, it is sold at \$400,000 without going out  
16 and looking at the land yourself.

17       A    That's right.

18       Q    How do you make a determination about  
19 that? How did you?

20       A    That's one of the investigative procedures  
21 or processes that one can do, is go look at it.  
22 Typically the best proof of what a piece of land is

1 worth is what it has sold for cash. There are two  
2 kinds of sales: sale for note and sale for cash.  
3 Sale for cash is a true sale. It is swap real value  
4 for that asset; pretty well establishes the value.

5       If you sell for a note, the same piece of  
6 property could sell for three times as much, if the  
7 borrower were willing to over buy or he made -- the  
8 buyer made a mistake so that the chances of it  
9 ultimately being collected are not as great as if one  
10 sells for cash.

11       Q    Okay. I think you also mentioned that you  
12 had a concern about the fact that the loan was  
13 unsecured.

14       A    Right. I mean, that's the weakest kind of  
15 credit, to an individual who has no -- does not have  
16 a substantial net worth. And I would distinguish --  
17 make the distinction between ex-Senator Fulbright,  
18 who had a substantial net worth, I had no problems  
19 lending to him unsecured, but lending to Jim McDougal  
20 unsecured was another matter.

21       Q    Just in looking at this -- the minutes of  
22 the meeting from July 7, 1978, I notice that, in

1 addition to the loan that has Bill Clinton and Jim  
2 McDougal for 20M which is an abbreviation for  
3 thousand; okay?

4 A Don't ask me. Where you come from that's a  
5 K, isn't it?

6 Q Yes. I see loan number one, it has 75M  
7 dollars, loan to Hendrikk Van Rossum?

8 A Hank Van Rossum. Dutch.

9 Q Which was also unsecured?

10 A V-a-n, R-o-s-s-u-m.

11 Q And number two, that is two MM. What's  
12 MM? It has two Ms, what does MM stand for?

13 A Hank Van Rossum had a McDonald's franchise,  
14 owned eight or nine McDonald's. MM, where is it?

15 Q Right here.

16 A 2 million line of credit. That's a \$2  
17 million line of credit to Pickens, P-i-c-k-e-n-s;  
18 Bond, B-o-n-d.

19 Q That was also unsecured?

20 A That's right. That was an annual line of  
21 credit that was extended to a very prominent  
22 construction company at the time. That company then

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1 would draw against that line of credit on occasions  
2 when it needed funds for various purchases.

3 Q And these were -- so it looks like the five  
4 loans that you discussed, that you presented to the  
5 loan review committee that day, three of them were  
6 unsecured; if I am reading this correctly; is that  
7 right?

8 A I have to take a look at it.

9 (Pause.)

10 Yes.

11 Q Okay?

12 A Two were secured by certificates of  
13 deposit, and three weren't secured. One owned  
14 several McDonald's; the other was a very prominent  
15 construction company; the third one was to Bill  
16 Clinton and Jim McDougal.

17 Q All right. Is this \$2 million loan to  
18 Pickens-Bond Construction Company, at the July 5  
19 directors loan review committee meeting the same as  
20 this July 7 loan to the officers loan review  
21 committee?

22 A Yes, same loan reported to two different

1 committees.

2 Q Okay. And what's the difference between  
3 the directors committee and the officers loan review  
4 committee?

5 A Do we need to go through that again?

6 Q Yes, I am afraid I didn't follow you the  
7 first time. I apologize.

8 A One is a committee made up of the directors  
9 of the institution. That's the directors loan  
10 committee.

11 The other is the officers loan committee,  
12 and that is made up of the various loan officers that  
13 grant loans within the financial institution.

14 Those are the people on the line that  
15 actually grant the loans.

16 Q I think you testified earlier that the  
17 entry here on the July 5, directors loan review  
18 committee minutes, only listed Clinton's name because  
19 it was an effort to improve the appearance of the  
20 loan?

21 A That was speculation on my part. I was not  
22 the author of those minutes, nor did I participate in

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1 the drafting of that language. It was an observation  
2 I made without facts.

3 Q Okay. So it could have been an oversight?

4 A Based on my impression and knowledge of  
5 what occurred in the institution at that time, you  
6 are right. I didn't realize I speculated that much.

7 MR. BARTOLOMUCCI: Which is not to say it  
8 is uninformed speculation.

9 MR. IVEY: Off the record.

10 (Discussion off the record.)

11 (Recess.)

12 BY MR. IVEY:

13 Q Now, I think you also testified that both  
14 the officers loan review committee and the directors  
15 loan review committee would meet after a loan had  
16 been approved?

17 A That's correct.

18 Q And they did not rescind loans that had  
19 already been made?

20 A No.

21 Q But there was a purpose with respect to, I  
22 guess, the training of junior loan officers and also



1 with respect to criticizing loans that were  
2 improperly made or made under questionable  
3 circumstances?

4 A Yes, that did occur.

5 Q Did these loan review committee minutes  
6 reflect that type of discussion? Is there any  
7 indication in the minutes that let you know that a  
8 loan was questioned in any way, or criticized?

9 A I don't recall that there were notations or  
10 indications of negative comments or actions  
11 suggested.

12 Q And your recollection was that there was  
13 some conversation about the loan to Mr. McDougal and  
14 Mr. Clinton, but not much?

15 A I don't -- let's be specific.

16 I don't recall there being any discussion  
17 on the \$20,000 loan at either of the committee  
18 meetings. I think I speculated that there very  
19 easily could have been discussions about the loan  
20 participation to Tucker/McDougal, but speculated that  
21 it would have been at the officers committee. There  
22 certainly could have been at the directors committee,

1 but I don't recall it. It was very unlikely for a  
2 political figure's loan to be criticized at a  
3 directors loan committee meeting.

4 Q With respect to these loan committee  
5 meetings, I think you noted that Gene Smith had  
6 attended one of these, or at least one of these  
7 meetings.

8 A Smith was not a member of the officers loan  
9 committee. He was an ex officio member of the  
10 officers loan committee.

11 Q I think you also mentioned that there was  
12 another --

13 A Paul Berry.

14 Q Paul Berry?

15 A Right. He succeeded Gene Smith in the  
16 position of bank lobbyist.

17 Q Were they there at the same time?

18 A Yes, but for a very short period of time.

19 Q Okay.

20 A Smith -- I think Berry was structured as  
21 the replacement for Smith, and Smith died a short  
22 period after Berry's joining the bank.

1 Q And Smith is the one you think was the  
2 emissary who brought the message?

3 A I do not recall specifically which one,  
4 Berry or Smith.

5 Q But you are sure it was one or the other?

6 A Yes, I am reasonably sure.

7 Q You also testified, I think you said it  
8 would have been the assigned function of the  
9 lobbyists to have --

10 A It would have been the normal procedure.  
11 They were the persons that the lobbyist would have  
12 been working with, political entities, and that would  
13 very likely have been part of their assignment and  
14 job responsibility, dealing with --

15 Q Political entities?

16 A -- political figures.

17 Q I guess I was going to ask you about that,  
18 because I am not familiar with the political  
19 arrangement in Arkansas with respect to the Office of  
20 the Attorney General. I know that you have a state  
21 legislature that handles legislation with respect to  
22 the banking industry, state banks; right?

1 A Yes.

2 Q And I know the governor has some  
3 involvement in setting state policy with respect to  
4 banks?

5 A I don't know that that's an accurate  
6 statement. I have certainly -- he certainly has  
7 administrative policy effects. I think the state  
8 banking laws are certainly generated from the  
9 legislature, and the governor certainly has some  
10 impact. I don't know that he has any individual  
11 policy decisionmaking or regulation-writing authority  
12 or rule establishment within the banking authority in  
13 the state, so that would be unusual.

14 Q And there is a state bank commissioner, I  
15 believe, as well; is that right?

16 A That's correct.

17 Q Is that the regulator that you just  
18 referred to a moment ago?

19 A No, I don't recall referring to a state  
20 banking regulator.

21 Q I'm sorry, I thought --

22 A I referred to regulators in general.

1 Q Oh, other than the state bank commissioner,  
2 which other regulators did you have in mind?

3 A The comptroller of the currency.

4 Q The OCC, the federal regulator here in  
5 Washington?

6 A Federal Deposit Insurance Corporation.

7 Q Okay, so we've got the federal regulators,  
8 FDIC and OCC, and then the state bank commissioner,  
9 in Arkansas. Union National Bank was one of those  
10 banks that was -- had dual regulations?

11 A No, to both your questions.

12 Q No? Okay, I'm sorry.

13 A The structure in Arkansas is there is a  
14 state banking commission, and there is a state  
15 banking commissioner that is head of that  
16 commission. It regulates state chartered banks. And  
17 basically, its functions are fairly limited to the  
18 issuance of charters and the branching activities of  
19 banks within the state.

20 The examination process of state banks is  
21 conducted by the FDIC, and independently, is  
22 conducted by a staff of examiners for the state

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1 banking commission.

2 Totally unrelated, national banks are  
3 regulated by the comptroller of the currency and  
4 their charters are granted by the controller's  
5 office, and examinations are conducted by the  
6 comptroller of the currency for nationally chartered  
7 banks. Union National Bank was a national bank, thus  
8 regulated by the comptroller of the currency, not by  
9 the state banking commission.

10 Q Okay. So there was no state regulator for  
11 Union National Bank?

12 A That's correct.

13 Q Did Union National Bank have interaction  
14 with the attorney general in its enforcement  
15 capacity?

16 A No more so than any other corporate  
17 citizen.

18 Q Is your --

19 A If the state brought some action against  
20 any other corporate citizen, it could easily bring  
21 the same action against a bank so they have that  
22 interplay.

1 Q But with respect to bank regulation, the  
2 attorney general had no role in that?

3 A No. No.

4 Q Are you aware of interaction that the  
5 lobbyists had with Mr. Clinton, Mr. Berry, and  
6 Mr. Smith?

7 A Paul Berry was a college roommate of Bill  
8 Clinton's; I know that. Gene Smith, to my knowledge,  
9 had no personal relationship with Bill Clinton. I am  
10 not aware of any, if any existed.

11 Q So Berry went to Georgetown with  
12 Mr. Clinton?

13 A No, must have been at University of  
14 Arkansas. At some time; I am not sure where. Berry  
15 was not a graduate or attended Georgetown.

16 Q Mr. Clinton never attended University of  
17 Arkansas?

18 A He taught law there as a professor, and I  
19 believe he and Berry may have roomed together at that  
20 time.

21 Q They were roommates when one was a  
22 professor and one was a student?

1 A Berry was a lobbyist for the -- I believe  
2 the American Medical Association after leaving  
3 college, and then I believe had an association with  
4 Don Tyson at Tyson Foods in Springdale, very near  
5 Fayetteville. And I am not certain if Berry was in  
6 college at the time he was a roommate with Clinton or  
7 not; I do know they were roommates at one time.

8 Q Do you know about when that was?

9 A No.

10 Q So with respect to the assigned function of  
11 the lobbyist, is it your testimony that Mr. Berry and  
12 Mr. Smith sought to get loans for politicians in the  
13 state of Arkansas?

14 A I'm saying in their responsibility as  
15 lobbying for the interests of the bank and its  
16 clients, they often had contacts with political  
17 entities, and would have likely been a very  
18 convenient and easy contact for credit requests.

19 So in that capacity, in their position of  
20 performing their other functions, they were  
21 frequently called upon by political entities to relay  
22 their requests for credit to the financial



1 institutions.

2 Q Okay. And when you say political --

3 A I would not define their primary or even  
4 secondary responsibility as to arrange loans for  
5 politicians, certainly. Even though I never saw  
6 either of their job descriptions, I doubt it included  
7 that.

8 Q When you say "political entities," what do  
9 you mean by that?

10 A Persons involved in the political arena.

11 Q Political officials?

12 A Yes.

13 Q So they were contacted by political  
14 officials who were seeking loans from the bank?

15 A I would assume so, because there were  
16 frequent contacts between those two parties.

17 Q Well, let's make sure we are clear about  
18 the fact and speculation line again.

19 A I had a number of relays of loan requests  
20 from Smith and Paul Berry to me and my officers that  
21 came directly from their contacts with politically  
22 connected individuals. So in that regard, they

1 relayed requests or brought loan requests into the  
2 financial institutions as a by-product, if you will,  
3 of their other lobbying assignments.

4 Q So this would have been a request that came  
5 directly from a politician to either Mr. Smith or  
6 Mr. Berry, and then to you?

7 A Yes.

8 Q Now, the loan that was made to Mr. McDougal  
9 and Mr. Clinton, did Mr. Clinton contact Mr. Berry or  
10 Mr. Smith?

11 A I do not know.

12 Q When Mr. Berry and Mr. Smith spoke to you  
13 they said they had spoken to Mr. McAdams?

14 A I would find it strange that McDougal would  
15 not come to me if he were making the loan request. I  
16 make an assumption -- and I emphasize "assumption" --  
17 that the loan request came through political  
18 connections. However, Jim McDougal was politically  
19 connected and politically oriented, so it very easily  
20 could have come through them jointly. But I doubt  
21 seriously that McDougal did it on his own  
22 initiative.

1 Q Because you and Mr. McDougal had a good  
2 working relationship?

3 A McDougal would have come to me rather than  
4 gone to Berry or Smith.

5 Q Because you and Mr. McDougal had a good  
6 working relationship?

7 A Right.

8 Q What about going to Mr. McAdams, would  
9 Mr. McDougal have done that?

10 A No.

11 Q Did you talk to Mr. McAdams at all about  
12 who had contacted him with respect to this loan?

13 A I never questioned Herbert McAdams.

14 Q Did you talk to Mr. Smith --

15 A I might have one time, but that's the  
16 reason I didn't anymore.

17 Q With respect to this loan?

18 A No.

19 Q On a different loan?

20 A At any time.

21 Q Did you talk to Mr. Berry or Mr. Smith,  
22 whichever was the emissary, about the source of the

1 request?

2 A I am sure I accumulated what information  
3 and details I could regarding the loan, but I do not  
4 specifically remember any statements or comments  
5 made.

6 Q Was this the first time Mr. McDougal came  
7 to you for a loan with which Mr. Fulbright was not  
8 connected?

9 A I believe that's correct. Union Bank may  
10 have made an automobile loan or something of that  
11 nature to McDougal individually. After a few years  
12 of successful operations with the joint arrangements  
13 of Tucker/McDougal, there would have been nothing of  
14 the range of the \$20,000 unsecured loan, and to my  
15 best -- my memory indicates that that probably was  
16 the very first one without Fulbright involvement.

17 Q When Mr. McDougal first was introduced to  
18 you, was Mr. McAdams the person that introduced the  
19 two of you?

20 A Yes, as I recall. "Introduced" maybe is  
21 too broad a term for the description of what  
22 occurred. Herbert McAdams called me on the

1 telephone, explained his relationship, and confidence  
2 in J.W. Fulbright and indicated that he had committed  
3 to make loans available to McDougal jointly with  
4 Fulbright.

5 As I recall, then McDougal was instructed  
6 to contact me or perhaps I was instructed to contact  
7 McDougal, one or the other, I don't specifically  
8 recall. But I don't believe there was a personal  
9 introduction. I believe my information, as I recall,  
10 came from a telephone conversation from McDougal --  
11 from McAdams.

12 Q And then all of your dealings with the --  
13 on the McDougal/Fulbright loans were through  
14 Mr. McDougal?

15 A I frequently had telephone conversations  
16 with Fulbright. And I recall on one, perhaps two  
17 occasions, the Senator would drop by when he was in  
18 town and basically say hello. But -- and very likely  
19 he could have dropped by and signed notes, but I  
20 remember generally were just welcoming type visits.

21 Q Do you know if Mr. McAdams and Mr. McDougal  
22 knew each other? Do you know the nature of their

1 relationship?

2 A Since McDougal had served both as  
3 administrative assistant to both McDougal -- pardon  
4 me, they are all running together.

5 Since McDougal had served as administrative  
6 assistant both to Senator Fulbright and former  
7 Senator John McClellan, I am certain that McAdams  
8 knew McDougal. I personally do not recall having  
9 heard that but because of that association, and  
10 because of McAdams's association with those two  
11 Senators, I am confident that he knew him prior to  
12 our doing business.

13 Q McClellan was the other senator from  
14 Arkansas with Fulbright at the time? I am not  
15 familiar with that name.

16 A Yes, John McClellan was the other senator.

17 Q And the relationship between McDougal and  
18 McAdams, do you know how far back it dated?

19 A I think they came over on the Ark, or was  
20 that the Mayflower.

21 Q So they went back a long ways?

22 A I'm sorry, what was your --

1 Q So they went back a long ways?

2 A Yes. As a matter of fact, I believe  
3 McAdams served as executor of McClellan's estate  
4 after his death, so a long-standing relationship.

5 Q I meant between McAdams and McDougal; I'm  
6 sorry.

7 A My speculation would be that their  
8 relationship went back to McDougal's association with  
9 McClellan and later Fulbright, so most likely it  
10 began with McClellan. As I recall, McDougal first  
11 worked for McClellan and later worked for Fulbright.

12 Q All right. So Mr. McDougal and Mr. McAdams  
13 had a preexisting relationship. In fact, it  
14 preexisted your meeting Mr. McDougal; is that fair to  
15 say?

16 A I qualified my answer on that. I am  
17 speculating on that. But because of McDougal's  
18 having previously been administrative assistant for a  
19 number of years for McClellan and Fulbright, I am  
20 confident that he knew him through that connection.

21 Q All right. Yet your speculation was that  
22 McDougal would not have contacted McAdams about the

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1 \$20,000 personal loan?

2 A My speculation is that he would not have.

3 Q And why is that?

4 A McDougal was not the kind of person that  
5 McAdams would have welcomed on a direct personal  
6 contact. McDougal would have known that. McDougal  
7 would have referred the work through me as opposed to  
8 going directly to McAdams.

9 Q I guess I am confused about how -- why this  
10 would have played out like it did. I mean, if  
11 Mr. McDougal had a good relationship with you, it  
12 seems like he could have come to you directly instead  
13 of all these emissaries being sent to you.

14 Do you have any information about why it  
15 worked that way?

16 A I certainly have enough informed background  
17 to speculate on it.

18 Q Well, let's shoot for factual information  
19 first. Do you have any factual information as to why  
20 it worked out that way; any direct knowledge about  
21 why --

22 A No, I certainly wouldn't have any direct



1 knowledge on why a person made one decision as  
2 opposed to another. I can't conceive that I ever  
3 would.

4 Q As to why you weren't approached directly  
5 as opposed to McAdams through Smith through Berry  
6 then to you?

7 A McDougal knew I wouldn't loan him \$20,000  
8 unsecured at that time.

9 Q And what was the basis of that knowledge?

10 A He wasn't entitled to unsecured credit.

11 Q Had you discussed this with Mr. McDougal  
12 before?

13 A No. McDougal was not dumb. Not at that  
14 time.

15 Q Do you think there are other bankers who  
16 might have lent Mr. McDougal \$20,000 unsecured? In  
17 other words, do you think there are other loan  
18 officers who might have viewed it differently than  
19 you did?

20 A There were three principal banks in  
21 Arkansas, all basically operated the same way, and  
22 catered to the same clientele. All three would have

1 made that loan, in my opinion, to those two players.

2 MR. BARTOLOMUCCI: I think the question,  
3 though, was about the loan to McDougal, a  
4 hypothetical loan to McDougal individually.

5 THE WITNESS: You said the two individuals.

6 MR. IVEY: I don't recall the question, but  
7 I think I understand the answer.

8 MR. BARTOLOMUCCI: Then can I just ask this  
9 question, just so the record is clear: Would other  
10 banks have turned down a request for McDougal by  
11 himself for an unsecured \$20,000 loan?

12 THE WITNESS: In my opinion, all three  
13 would have.

14 MR. BARTOLOMUCCI: So the difference in the  
15 deal is then-Attorney General Clinton?

16 THE WITNESS: An up-and-rising political  
17 star, not necessarily Bill Clinton.

18 BY MR. IVEY:

19 Q So your thought then is that these banks,  
20 Union National and the three other banks that you  
21 were referring to -- or were you referring to two  
22 other --

1 A There were three others at the time, two  
2 later merged, but at that time there were three  
3 others.

4 Q They would have made the loan, not on the  
5 basis of normal creditworthiness standards but simply  
6 the fact that, quote unquote, "a rising political  
7 star" was connected to the loan; that's your view?

8 A In my view, each of the other three  
9 institutions would have made that loan.

10 Q So when you testified that the bank was  
11 friendly to politicians, I assume what you mean is  
12 politicians who are viewed as rising stars are likely  
13 to get unsecured loans or are more likely to get  
14 unsecured loans from all four of these banks that you  
15 are talking about?

16 A I am toying with this, because it seems --  
17 I am compelled to state the reason in the answer.

18 Each of those financial institutions was  
19 anxious to please and have that rising star  
20 affiliated with them, or they affiliated with that  
21 rising star. So in that regard, each, in my opinion,  
22 would have accommodated that loan request.

1 Q And your bank was friendly to politicians  
2 because it was viewed as politically --

3 A It was good business.

4 Q It was good business, okay.

5 And you said that this was not unique to  
6 Union National, that most commercial banks would do  
7 this as well in Arkansas?

8 A I certainly wouldn't say all, but a large  
9 number would; many would, yes. I don't think that I  
10 said "all," but many would.

11 Q Would these types of loans -- I think we  
12 mentioned state legislators. If you had one that was  
13 viewed as a rising star, would they be viewed as  
14 someone qualified for these unsecured types of loans?

15 A To varying degrees. They certainly would  
16 be given an audience more quickly than someone off  
17 the street, yes.

18 Q I assume members of Congress would fall in  
19 that category as well?

20 A Yes.

21 Q Is there a lieutenant governor in Arkansas;  
22 yes?

1 A Yes. To a much lesser degree.

2 Q So the governor, lieutenant governor,  
3 attorney general would all fall in that category as  
4 well, probably?

5 A Yes.

6 Q And obviously senators would?

7 A Yes.

8 Q Mayor of Little Rock would fall into that  
9 category?

10 A Yes.

11 Q What about top judicial officials, like  
12 federal judges or state supreme court members?

13 A It is very rare in my experience to have  
14 federal judges obtaining credit from any financial  
15 institution I was familiar with. That's based on my  
16 experience as an examiner for 10 years and then as a  
17 lender also.

18 Q What about state judges?

19 A I don't recall any specific cases, so  
20 standards were a little higher, perhaps, in those  
21 ranks.

22 Q So there was nothing -- I mean, this is

1 typical of the way lending was done in Arkansas  
2 during that period?

3 A Not uncommon.

4 Q I guess top political officials would have  
5 access to unsecured loans that regular people would  
6 not have access to?

7 A I think that's a fair statement.

8 Q And the logic of this provision of  
9 unsecured loans is that it is good business for the  
10 banks?

11 A Yes.

12 Q Were the banks expecting anything in return  
13 from these top political officials for these  
14 unsecured loans?

15 A The last time I checked, banks were  
16 designed to make a profit.

17 Q Did they have concern about whether the  
18 loans would be repaid or not?

19 A Making a profit involves loans being  
20 repaid. I don't -- I don't know of any experience  
21 that I was involved in, or observed, of a financial  
22 institution extended credit on that basis -- fully

1 intending to write it off -- to incur a loss. I

2 don't recall such an occasion.

3 Q It was in expectation of being paid?

4 A Right.

5 Q Was that true with respect to the McDougal  
6 and Clinton loan?

7 A I would certainly assume so.

8 Q It was certainly your understanding it  
9 would be repaid?

10 A There was a promise to repay executed and I  
11 believed it to be exactly what it was, and in fact  
12 that occurred.

13 Q Okay. And of the particular terms of the  
14 June 1978 loan, I think you testified there was  
15 nothing unusual about those in particular?

16 A Well, I don't know that I testified to  
17 that. If so, I didn't understand the question. A  
18 one-year unsecured note without an identified source  
19 of repayment is unusual, yes.

20 Q When you said there was nothing in the June  
21 1978 loan, what did you mean by that? Were you  
22 referring to the amount, the interest rate?

1 A I don't know. I was asked to read the note  
2 and to compare the two forms, the original with copy  
3 and see if anything was unique, perhaps that was  
4 where you wrote that answer. I don't recall that  
5 question. I mean, the interest rate and the  
6 maturity, certainly -- let me explain it a different  
7 way.

8 There could be an identified source of  
9 repayment within an obligation and not spelled out on  
10 the promissory note itself. I mean, a man could have  
11 a piece of land that had a contract to sell due in  
12 one year, and it could generate \$38,000, as an  
13 example. So to set up a note due for six months --  
14 pardon me, due in 12 months with a clearly identified  
15 source of repayment, yet the note would not spell out  
16 what the source of repayment is.

17 And the distinction I make is that a  
18 \$20,000 loan, as was this loan, did not have an  
19 identified source of repayment. That was unusual.  
20 Nothing else on the note was unusual.

21 Q Now, with respect to the participation that  
22 you and the bank had with Citizens Bank of Flippin, I



1 think you testified that -- well, were asked some  
2 questions about Mr. Patterson's participation in the  
3 deal.

4 And you were asked a hypothetical, actually  
5 you said that you thought it was problematic. I was  
6 going to ask you a couple of questions about that.

7 Were you aware of any disclosures, or  
8 whether Mr. Patterson made any disclosures, with  
9 respect to his participation in the loan to Citizens  
10 Bank of Flippin?

11 A No, I qualified my answer to the extent of  
12 the knowledge I had access to, that a disclosure  
13 would be in order. In the absence of knowing that, I  
14 would think it would be improper, or at least  
15 questionable, banking practice.

16 I have no idea what occurred between  
17 Patterson and his bank. I am not aware, however,  
18 from the documents that I have seen, that there was  
19 any passing-through of that disclosure to Union  
20 Bank. And I think that same obligation would have  
21 existed from Patterson, and secondarily, from the  
22 Citizens Bank of Flippin under those circumstances.

1 Q Who was the official that had contact for  
2 Union National with Citizens Bank with respect to the  
3 participation?

4 A Howard Qualls, the manager of that  
5 department. And this document indicates that Morris  
6 Jackson, one of his associates, apparently handled  
7 that particular transaction.

8 Q Okay. Are those two people that had  
9 frequent dealings with Citizens Bank?

10 A Yes.

11 Q There was in fact a significant  
12 participation arrangement, I take it, between the two  
13 banks?

14 A I don't recall the volume, but I do know  
15 Citizens Bank of Flippin was a name that came up  
16 fairly frequently, yes, sir.

17 Q And I take it you were not necessarily  
18 privy to the conversations between Qualls -- and  
19 Jackson, was it?

20 A Yes.

21 Q And Citizens Bank officials, with respect  
22 to this?

1 A I, most probably through loan committee  
2 discussions, had the benefit of some of those  
3 conversations. It is very likely that I certainly  
4 did not have benefit of all of those conversations.

5 Q Now, you mentioned a gentlemen's agreement  
6 as well, which I take it was not written down on any  
7 legal document because it was sort of the  
8 understanding that the two banks had with respect to  
9 the participation arrangement.

10 A I'm sorry. Was that a question?

11 Q Yes, sir.

12 A I'm sorry. You will have to ask it again.

13 Q Well, the gentleman's agreement that Union  
14 National had with Citizens Bank, I take it was not  
15 written down anywhere. It was based on --

16 A Tradition and --

17 Q A course of dealings over a certain period  
18 of time?

19 A A course of dealings, yes. And similar  
20 relationships existed among and between all of the  
21 banks in the marketplace, not just Arkansas.

22 Q Okay. And the gentleman's agreement was

1 that the participating bank would get payment first?

2 A First-out arrangement.

3 Q I don't recall your answer on this. I was  
4 trying to recall if you remembered, or if you knew  
5 personally, whether that had taken place on this  
6 loan?

7 A The loan application indicates that there  
8 was a first-out arrangement on this loan. There was  
9 certainly no documentation, there was no by party --  
10 I mean, there was no mutual agreement between the  
11 parties, just an entry by Union Bank saying that was  
12 the arrangement. I do know from common practice that  
13 was generally the terms of loan participations.

14 Q Okay. I think you also said that this  
15 participation agreement provided some additional, I  
16 think the word you used was "comfort," with respect  
17 to the \$20,000 unsecured loan. Did I understand that  
18 correctly?

19 A I am not sure exactly what connection. I  
20 think maybe if you can give me some more. I think  
21 you may be referring to my response to Chris's  
22 question about the banking practices of making an

1 equity loan and then buying a participation in the  
2 other part of the loan.

3 And I speculated that there is -- one could  
4 make the argument that buying a participation would  
5 then give the bank really an improved position  
6 because it would get first call on the collateral,  
7 ahead of the originating bank, since it had the  
8 first-out arrangement.

9 Q You were asked a question about financial  
10 information in reference to, something along the  
11 lines, sometimes it is better not to request the  
12 information. But I think you also followed that up  
13 with a caveat, "but that's speculation." I wanted to  
14 be clear on that point.

15 Do you have any direct knowledge that no --  
16 that financial statements were not requested with  
17 respect to the Clinton/McDougal loan to avoid getting  
18 information?

19 A I don't think I was asked that and I didn't  
20 address it. And I wouldn't have any knowledge of  
21 whether -- I would have, on the \$20,000 loan, I would  
22 have been the one requesting the financial

1 statement.

2 I knew from perhaps limited information  
3 that the statement would offer no support, so I made  
4 no great effort or no -- I didn't press the point of  
5 obtaining a personal financial statement. I knew it  
6 would be of no supporting value.

7 Q So you didn't ask for --

8 A I don't remember if I asked for it or not.  
9 The only conclusion I drew is that I didn't press for  
10 it.

11 Q And this would be you didn't press  
12 Mr. Clinton for it --

13 A As you know, a requirement for extension of  
14 credit is financial documentation.

15 Q I'm sorry. So you said you didn't press  
16 Mr. Clinton for the documentation, or Mr. McDougal --

17 A I said I don't know.

18 Q With respect to the participation, would  
19 financial statements have been provided, or are they  
20 supposed to be provided with respect to the  
21 participation loan?

22 A Yes. They are supposed to be.

1 Q Okay. Was that what you were referring to  
2 as well, about not requesting it?

3 A Again, I didn't handle that loan so I  
4 certainly wouldn't have been the one requesting it.

5 The loan application indicates that there  
6 is a financial statement on McDougal, but there is  
7 none on Bill Clinton.

8 Q So with respect to the participation loan,  
9 is it fair to characterize the statement as  
10 speculative, that, sometimes people don't request  
11 information with respect to financial statements; you  
12 don't know whether they -- what they did there or why  
13 they did it? Is that a fair statement?

14 A I have no personal knowledge whether they  
15 examined it or not.

16 Q You also mentioned some speculation with  
17 respect to Clinton being a rising star. I think you  
18 said there was some speculation that he was going to  
19 run for governor or senator during this period?

20 A As I recall, that was discussed in the  
21 media.

22 Q Clearly you didn't have any direct

1 knowledge about that, though; right?

2 A Absolutely not.

3 Q And sort of the perception of him as a  
4 rising star, my recollection is that he had run for  
5 Congress shortly before he became the attorney  
6 general, and had lost the election; is that your  
7 recollection?

8 A I had read that repeatedly. I don't recall  
9 knowing that when I repeatedly read it, so I probably  
10 never knew.

11 Q In any event, you are aware then of only  
12 one election that he had had directly at that point,  
13 and that would be the election to the Office of  
14 Attorney General?

15 A Yes.

16 Q So you didn't know that or you didn't  
17 recall that he had run for Congress and lost just  
18 prior to that?

19 A I don't think I knew it, but I don't know.

20 MR. IVEY: Can we go off the record for a  
21 second.

22 (Discussion off the record.)



1 MR. IVEY: That's all for me now.

2 MR. BARTOLOMUCCI: I just have a couple of  
3 fast questions for you. In the interest of getting  
4 this transcript prepared as fast as possible, I will  
5 forgo asking a lengthy series of redirect.

6 EXAMINATION

7 BY MR. BARTOLOMUCCI:

8 Q This credit application of August of '78  
9 actually describes Clinton as the governor-elect. Do  
10 you recall that?

11 A Yes.

12 Q So at least as of August '78, Mr. Clinton  
13 either had designs on the governor's office or had  
14 even been elected to that post; is that safe to say?

15 A I think its inaccurate, but that's what the  
16 document says.

17 Q Is there any doubt in your mind that in  
18 June of '78, it would have been commonly known that  
19 Mr. Clinton was a rising political star in Arkansas?

20 A Yes, I recall having read that, and I  
21 understood that from conversations with officers  
22 within my bank.

1 MR. BARTOLOMUCCI: That's all I have.

2 MR. IVEY: That's all for me.

3 (Whereupon, at 6:07 p.m., the deposition  
4 was concluded.)

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HARRY DON DENTON

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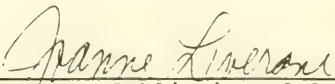
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

JULY 31, 2000



**DEPOSITION OF WAYNE HARTSFIELD  
IN RE: S. RES. 120**

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**TUESDAY, MAY 7, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of WAYNE HARTSFIELD, called  
for examination pursuant to notice of deposition, at 2:08 p.m. in  
Room 640-A of the Hart Senate Office Building, before CINDY L.  
SEBO, a Notary Public within and for the District of Columbia,  
when were present:

DOUGLAS R. NAPPI, Esq.  
Majority Counsel  
JAMES S. PORTNOY, Esq.  
Minority Associate Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.



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## 1                   P R O C E E D I N G S

2           MR. NAPPI: This deposition is being  
3 conducted pursuant to Senate Resolution 120. This  
4 resolution establishes a special committee  
5 administered by the banking committee to conduct an  
6 investigation involving the Whitewater Development  
7 Corporation and other related matters.

8           Section 1B of Senate Resolution 120  
9 authorizes investigation in public hearings into a  
10 number of issues, including the activities,  
11 investments and tax liability of Whitewater  
12 Development Corporation and related to Whitewater  
13 Development Corporation of its officers, directors  
14 and shareholders. This will be the focus of today's  
15 deposition.

16          This deposition is being conducted in  
17 advance of public hearings. You may at some time be  
18 called to testify at these public hearings. We will  
19 ask you a series of questions. You will be  
20 testifying under oath.

21          If you don't understand a question, let me  
22 know, and I will rephrase. If you need a break, let

1 me know. The stenographer will prepare a record of  
2 questions and answers.

3 The deposition will be treated as committee  
4 confidential under commencement of the hearings.  
5 Prior to the hearings, you will receive a letter from  
6 the committee telling you that you may come to the  
7 Senate to review the transcript of your deposition  
8 and make note of any corrections for transcription on  
9 an errata sheet.

10 There are also arrangements that can be  
11 made to send you your deposition for technical  
12 corrections. If you are called to testify at a  
13 public hearing, you will be permitted to have a copy  
14 of your deposition transcript in advance of your  
15 testimony.

16 You may be represented by counsel.  
17 Objections to the form of questions will be noted for  
18 the record. Counsel may object on grounds of  
19 privilege or relevance.

20 The committee chairman may rule on  
21 objections where the witness refuses to answer a  
22 question.

1 Would the reporter please swear in the  
2 witness?

3 Whereupon,

4 WAYNE HARTSFIELD

5 was called as a witness and, having first been duly  
6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. NAPPI:

9 Q Would the witness please state his name for  
10 the record?

11 A Wayne Hartsfield, H-A-R-T-S-F-I-E-L-D.

12

13

14 Q And your present business address?

15 A PO Box 608 Searcy, Arkansas, First National  
16 Bank, 72143.

17 Q And the telephone number at your place of  
18 work?

19 A Area code 501-279-3500.

20 Q Mr. Hartsfield, how long have you been  
21 employed at the First National Bank of Searcy?

22 A Since March of 1960.

- 1 Q And are you currently the president?  
2 A Yes, sir.  
3 Q How long have you held that position?  
4 A Since January of 1972.  
5 Q Are you a member of the board of directors?  
6 A I am, sir.  
7 Q What position do you hold on the board?  
8 A Well, I moderate the board meetings. We do  
9 not have a chairman, but I act as chairman of our  
10 board of directors of the bank.  
11 Q How long have you held that position on the  
12 board?  
13 A Since 1974.  
14 Q Okay. Have you ever held a position in the  
15 Arkansas Banker's Association?  
16 A Yes, sir.  
17 Q What position or positions have you held?  
18 A Well, I served as a group chairman. I  
19 served as treasurer, and then I went through the  
20 chair serving as the vice president and first  
21 vice president and president of the association.  
22 Q Okay. What group were you chairman of?
- 

- 1 A Group II.  
2 Q What is group II?  
3 A We have five groups in the State of  
4 Arkansas. And group II is a group that extends  
5 basically through the central and north central part  
6 of the State of Arkansas.  
7 Q So it's a geographic region?  
8 A Yes, sir, it is. It's our -- if you're  
9 familiar with our state, it's from Hot Springs really  
10 to the Missouri line, taken about, oh, geographically  
11 approximately 1/5 of our state.  
12 Q Very good. And what were the dates of your  
13 chairmanship of this group?  
14 A That predates the time that I was president  
15 of the association, probably in the -- I'm just going  
16 to have to give you my best estimate on this.  
17 Probably in the late '70s, early '80s.  
18 Q And when were you treasurer?  
19 A Again, I'm going to have to give you an  
20 estimate. But I'd say the early '80s.  
21 Q And then you were a vice president?  
22 A Yes, sir.



1 Q Do you recall the approximate dates?

2 A I'm going to have to back it up from the  
3 time I was president. I would have been a  
4 vice president from -- from about May of '85 through  
5 May of '86. Then I served as first vice president  
6 from May of '86 through May of '87. I served as  
7 president from May of '87 through May of '88.

8 Q Does the ABA -- can I refer to the Arkansas  
9 Banker's Association that way without confusing you?

10 A I'm sorry, I didn't understand the  
11 question.

12 Q I was going to refer to the Arkansas  
13 Banker's Association as the ABA, is that okay with  
14 you?

15 A Surely, yes.

16 Q Okay. Does the ABA have a legislative  
17 affairs committee or a legislative affairs organ?

18 A Yes.

19 Q Were you a member of the legislative  
20 affairs committee?

21 A Yes. We refer to it as the state  
22 legislative committee and then a federal legislative

1 committee. And I have from time to time served on  
2 both of those committees.

3 Q Okay. And the National Bank of the  
4 Searcy. Did I get the name correct?

5 A It's First National Bank.

6 Q First National Bank of Searcy, excuse me.

7 A Yes, sir.

8 Q How big an institution are you presently?

9 A We're about 250 million in total assets.

10 Q Okay. And in 1987, how big an institution  
11 were you?

12 A Well, I've got some records here. If  
13 you'll give me a second, I can tell you. That's one  
14 thing I have always kept, the specific date -- I can  
15 give you by quarters, I can give you 12/31 of '87 if  
16 that would be sufficient.

17 Q Yes, that would be very helpful.

18 A 133 million.

19 Q Can you give me yearend '88?

20 A Yes, sir. 145 million.

21 Q Okay. Now, if I could ask you to focus for  
22 a moment on the year in which you were president of

1 the ABA.

2 A Yes, sir.

3 Q Is the presidency a full-time position or a  
4 part-time position?

5 A Oh, no, it's strictly a part-time position.

6 Q So there's a chief executive officer of the  
7 ABA?

8 A Yes, sir.

9 Q And during your presidency, who was that?

10 A H.C., "Bo", Carville, C-A-R-V-I-L-L-E.

11 MR. PORTNOY: For our court reporter,  
12 that's H.C., and his nickname is Bo.

13 Did I have that correct?

14 The WITNESS: Yes. Yes, it's H. C. "Bo"  
15 in quotes, Carville, C-A-R-V-I-L-L-E.

16 MR. PORTNOY: Thank you, sir.

17 BY MR. NAPPI:

18 Q What was Mr. Carville's title?

19 A He was executive vice president and  
20 manager.

21 Q And what can you tell us about  
22 Mr. Carville's background, his pre --

---

10

1 A Well, I'm going to have to give you an  
2 estimated time. As I recall, he joined the  
3 association some time probably about 1965, somewhere  
4 in that area, and succeeded a longtime executive  
5 director, probably a couple of years later, after an  
6 internship.

7 So I must say sometime in probably the  
8 mid to late '60s, he was named executive director and  
9 served in that capacity for -- from that time forward  
10 until his retirement, probably about a couple, three  
11 years ago.

12 Q Do you know what Mr. Carville did before he  
13 joined the Arkansas Bankers?

14 A No, sir, I do not. He was somewhere in the  
15 allied field of banking, but I'm not sure.

16 Q All right. Do you know a woman named  
17 Charlotte Mae?

18 A Yes, sir.

19 Q How do you know Charlotte Mae?

20 A Charlotte Mae worked for the Arkansas  
21 Banker's Association for a number of years. Later  
22 there was another banking organization formed, the

1 Arkansas Association of Bank Holding companies, and  
2 she was selected by the board of that organization to  
3 become its executive director.

4 Q What year did she become the executive  
5 director of the Bank Holding Company Association?

6 A I just do not recall. It was -- she  
7 probably -- I just have to give you an estimate. And  
8 I could be off two, three, four years. Probably  
9 somewhere in the late '70s.

10 Q Would you feel comfortable saying it was  
11 before 1985?

12 A Yes, sir, I know that it was before 1985.

13 Q How do you know that?

14 A Well, just based on my association in  
15 banking, I just recall that she was over there before  
16 I was in the chair as a vice president of the  
17 Arkansas Banker's Association.

18 Q Okay. Now, in your role as  
19 president -- actually, let's back up.

20 In your role as president of Arkansas  
21 Banker's Association, were you involved in  
22 formulating the association's position on bank

1 legislation being considered by the Arkansas  
2 legislature?

3 A As far as specific legislation while I was  
4 president or while a member of the committee? I'm  
5 not sure I'm following your exact question there,  
6 sir.

7 Q Well, if you want to lead us through the  
8 progression, from the time -- let's start when you  
9 were first vice president.

10 A Okay, sir.

11 Q Did you have a role in formulating  
12 positions on legislature -- on legislation, excuse  
13 me?

14 A Yes, sir, I was a member of the committee  
15 that looked at various items of legislation, whether  
16 it be positions that we took positive, or whether we  
17 did not take a position or whether it was opposing,  
18 maybe what we consider to be punitive legislation.

19 I was not a dominant force, but I was a  
20 member of that committee. I certainly had an  
21 opportunity to express myself.

22 Q Okay. And was that the state legislative

1 committee?

2 A Yes, sir.

3 Q Okay. You were a member of that while you  
4 were first vice president?

5 A I would have been an ex officio -- ex  
6 officio of the committee being in the role as a -- as  
7 an officer of the association on all the committees  
8 of that nature, not only the legislative, but other  
9 committees. So I was ex officio, yes.

10 Q So you would be an ex officio member of all  
11 committees of the ABA?

12 A Yes. We had direct supervision over some  
13 of them. And I do not recall whether I was certainly  
14 on that committee or not, but certainly I would have  
15 had an opportunity to participate being an officer.

16 Q Okay. What about when you were president,  
17 I assume you had some role in formulating positions  
18 on legislation?

19 A Yes, sir.

20 Q Could you explain that role? Were you a  
21 member of the state legislative committee?

22 A Well, I guess the president of any banking

1 association perhaps in any state would be in a  
2 similar situation. But certainly I think the banks  
3 in the state elect you to have some responsible role  
4 as far as the legislative process is concerned,  
5 certainly that would include banking legislation to  
6 be considered before the state legislature.

7 Q Okay. Do you think it's fair to say that  
8 the membership of your organization felt that by  
9 electing you to the succession of offices you held  
10 culminating in your presidency felt you had a sense  
11 of where the state industry stood on various issues?

12 A Well, that would be kind of a hard answer  
13 for me to make as a judgment of myself. I would hope  
14 that they certainly would feel that, you know, I  
15 would have the -- some of those senses of direction  
16 that our association should be taking. If that makes  
17 sense to you, you know --

18 Q Yes. I understand, it's not something you  
19 can quantify like dollars and cents.

20 A Right.

21 Q I was just -- obviously, you probably had a  
22 sense of the reputation you had amongst the banking



1 community in Arkansas.

2 A I would hope so, yes, sir.

3 Q And you would say that was generally  
4 positive, you knew how to get things done as far as  
5 legislation?

6 A Well, you never know the results of that  
7 until --

8 Q I hear you. I'm giving you an opportunity  
9 to brag on the record, I can tell you.

10 A Well, I don't need to do that.

11 MR. PORTNOY: Off the record.

12 (Discussion off the record.)

13 BY MR. NAPPI:

14 Q All right. If we could go back on the  
15 record.

16 A Yes, sir.

17 Q Let's start with the time that you were  
18 first vice president. So we're talking May of '86  
19 through May of '87.

20 A Yes, sir.

21 Q Who is the largest institution that was a  
22 member of the ABA?

1 A The largest? Again, I'm going to have to  
2 give you a couple of members, because I'm not sure  
3 which one would have been the largest. Probably the  
4 First Commercial Bank and/or the Worthin Bank would  
5 be the two larger members of the association at that  
6 time. And I do not recall which would have been the  
7 largest.

8 Q And would that have been -- would the  
9 same -- the same be obtained while you were  
10 president?

11 A Well, there's been so many mergers going on  
12 and acquisitions, I'm assuming you're speaking of the  
13 holding company level.

14 Q Yes.

15 A Okay. Again, based on mergers and  
16 acquisitions and those type things, probably one of  
17 those two organizations would have still been the  
18 largest. And I do not recall which would have been.

19 Q Okay. Was Twin City Bank a member of your  
20 organization?

21 A They were not a member of the Arkansas  
22 Banker's Association at that time, no, sir.

1 Q Have they since become a member?

2 A Yes, sir, they have.

3 Q Now, they were one of the larger state  
4 banks in Arkansas in the late '80s; isn't that true?

5 A State bank? Yes, sir, I do not recall  
6 having seen the exact numbers. But I would think  
7 they would be one of the larger state-chartered  
8 banks.

9 Q Did it seem unusual to you that they were  
10 not a member of the Arkansas Banker's Association?

11 A Oh, I don't know. To some degree, I guess  
12 maybe so, but they had not been for some time. So I  
13 guess from that standpoint, it wasn't particularly  
14 unusual.

15 We had two, three, four other banks in the  
16 state that were not members as I recall. So, you  
17 know, it wasn't a big issue at that point with me.  
18 Because they weren't members, you know, prior to my  
19 tenure.

20 Q Do you know why they left the ABA?

21 A No, sir, I do not.

22 Q Do you recall approximately when they left?

1 A No, sir.

2 Q Were there any other -- strike that.

3 Was Twin City Bank -- would you estimate  
4 that at that time between '86 and '88, Twin City Bank  
5 was one of the 10 largest banks in the state?

6 A Well, let me think for just a moment.

7 Yes, I would estimate based -- to the best  
8 of my knowledge, they probably would have been in the  
9 top 10.

10 Q Are there any other -- at that time --

11 MR. PORTNOY: Can I just ask to clarify?

12 Sir, were you speaking of both  
13 nationally-chartered banks and state-chartered banks  
14 or just state-chartered banks?

15 The WITNESS: To the best of my  
16 recollection, of all banks in the state, state and  
17 federally-chartered banks, they would have been in  
18 the top 10, to the best of my recollection.

19 MR. PORTNOY: Thank you, sir.

20 BY MR. NAPPI:

21 Q Are there -- were there any other banks in  
22 this time period -- let me rephrase that.

1 During this same time period, 1986 through  
2 the end of your presidency, were there any  
3 other -- were any of the other top 10 banks in  
4 Arkansas not members of the ABA?

5 A As I recall in the top 10, there would not  
6 have been any other state or nationally chartered  
7 banks that were not members in the top 10.

8 Q Was Twin City a member of the organization  
9 that Charlotte Mae headed up?

10 A I really do not know. I do not recall that  
11 I ever had a membership roster of those banks in that  
12 association. And I was not a member of it. So I  
13 just wouldn't have a reason to know the answer to  
14 that really.

15 Q So you never heard any scuttlebutt, I mean,  
16 as to the membership of another industry trade  
17 association?

18 A Oh, yes.

19 Q And you never heard that the -- one of the  
20 larger banks in the state was or was not a member?

21 A Well, we had a lot of dual memberships, to  
22 identify one of those, whether they were or were not,

---

20

1 I just really would not know, because there was so  
2 many dual memberships.

3 Q Fair enough. Do you know a gentleman named  
4 Ed Penick?

5 A Yes, sir.

6 Q How do you know Mr. Penick?

7 A Well, I think we need to clarify. Are you  
8 speaking of Ed Penick, Senior or Ed Penick, Junior?

9 Q Ed Penick, Junior.

10 A Ed Penick, Junior. Yes, sir.

11 Q And how do you know him?

12 A Well, I had known him for a number of  
13 years. I knew his father when he was with Worthin  
14 Bank and just by association and being in a bank.  
15 I've known him probably 25, 30 years.

16 Q Okay. And you knew he was president of  
17 Twin City Bank?

18 A Yes, sir.

19 Q And you knew this back in the time period  
20 I'd ask you to focus on?

21 A Yes, sir, I did.

22 Q 1986 through 1988?

1 A Yes, sir.

2 Q Do you know Terry Renaud?

3 A Yes, sir.

4 Q How do you know Mr. Renaud?

5 A Well, I've known him basically the same  
6 way. I knew that he was certainly chairman of the  
7 board of Twin City Bank, through advertising, through  
8 various things. They did a lot of TV and newspaper  
9 advertising.

10 And I'd seen him at some various functions  
11 in Little Rock where bankers associates would be  
12 involved, so I knew who he was by that.

13 Q Okay. And you knew him at that time?

14 A Yes, sir.

15 Q In 1986 and 1988?

16 A I did.

17 Q Frank Lyon, Junior, do you know him?

18 A Yes, sir.

19 Q How do you know Mr. Lyon?

20 A Well, Mr. Lyon was -- I know him really  
21 through his association with Coca-Cola Bottling  
22 Company. He owned that company, and they had a

1 branch distribution center here in Searcy. And I  
2 knew him through that business relationship of having  
3 the distribution plant which at one time was a  
4 manufacturing plant also.

5 Q Did you know of his affiliation with Twin  
6 City?

7 A Yes, sir.

8 Q What was the nature of that affiliation?

9 A He was a stockholder. He and his father  
10 were stockholders.

11 Q Okay. And that was a situation in 1986 and  
12 1988, that time period?

13 A To the best of my memory, it was, yes, sir.

14 Q And do you know a woman named Margaret  
15 Davenport?

16 A I know the name. And I recall having met  
17 her on one occasion. Anything passed that, I would  
18 not.

19 Q Okay. Do you know how you met her or do  
20 you recall the occasion where you met her?

21 A She was on some board. It could have been  
22 AIDC or some -- it was a group outside of banking



1 where she participated on the board. And I do not  
2 recall the board.

3 But it was a meeting where a number of  
4 business leaders in Arkansas were present. It could  
5 have been state chamber of commerce. I do not  
6 recall. But I do recall meeting her.

7 Q Was it ADFA?

8 A Pardon me?

9 Q Was it the Arkansas Development Finance  
10 Authority?

11 A No, sir, I don't think so. Because I  
12 didn't have enough contact with that, so I do not  
13 recall it was there.

14 Q Okay. Now, TCB was not a member of the  
15 ABA. Did they handle their own legislative affairs  
16 work?

17 A Well, I don't know that I would know that.  
18 I saw them there on an occasion or at the State house  
19 when I would have been there. So I would assume so,  
20 but I honestly would not know whether they did or  
21 didn't, whether they had a lobbyist or whether they  
22 did it themselves.

1 Q Okay. You just made a statement that  
2 raises a couple of questions. Who did you see at the  
3 State house?

4 A Ed Penick, Junior.

5 Q Did you ever see Mr. Renaud?

6 A I could not say whether I did or didn't. I  
7 just do not recall. I saw him at so many other  
8 functions, and I just do not recall whether I ever  
9 saw him at the State house or not.

10 Q When you say the State house, what are you  
11 referring to?

12 A The State Capitol, I'm sorry.

13 Q But at meetings of the legislature or -- at  
14 the Governor's office?

15 A It would have been during legislative  
16 session.

17 Q What do you know about the nature of  
18 Mr. Penick's relationship with then-Governor Clinton?

19 A I do not.

20 Q What about Mr. Renaud?

21 A I do not.

22 Q As president of the banker's association,

1 you must have had contact with Governor Clinton; is  
2 that correct?

3 A A limited. My contacts would have been  
4 more through my state senator and my state  
5 representative who was serving in the Arkansas  
6 legislature with the bank commissioner and people  
7 like that. I had very little personal contact with  
8 Governor Clinton.

9 Q Who was Governor Clinton's contact person  
10 for banking issues during the time you were first  
11 vice president and later president?

12 A Sam Bratton handled most of the issues that  
13 I had conversation with anyone on the Governor's  
14 staff with.

15 Q Anyone else in the Governor's staff you  
16 ever --

17 A Well, if you would consider the bank  
18 commissioner's on the Governor's staff, I had contact  
19 with him. I do not recall any other specific staff  
20 person that would have been domiciled in the  
21 Governor's office. Maybe on one or two occasions,  
22 Betsy Wright had one piece of legislation that I do

1 recall.

2 Q What piece of legislation was that?

3 A I was an omnibus -- what I call the omnibus  
4 banking bill that encompassed some issues involving  
5 banking.

6 Q Was this the bill that was taken up in the  
7 1988 special session?

8 A Yes, sir.

9 Q And that's the only bill you recall having  
10 contact with Betsy Wright on?

11 A Yes, sir.

12 Q Do you recall why you had contact with  
13 Betsy Wright on that, rather than Sam Bratton?

14 A Probably -- I do not recall specifically.  
15 It was probably over some technicality or some  
16 language in the bill to get a clarification of the  
17 meaning of it.

18 Q Do you recall what technicality it was?

19 A No, sir, I do not.

20 Q Was it the 300-feet provision?

21 A No, sir, that was not in that bill.

22 Q In the 1988 banking bill?

1 A No, sir, not to the best of my memory.

2 Q That was not in the --

3 A Are you referring -- may I ask a question?

4 Q Sure. Yes, if you need clarification,  
5 please let me know.

6 A Are you referring to the bill that the  
7 Governor called a special session now?

8 Q Yes, sir.

9 A No, sir. There was no 300-foot provision  
10 in that bill to the best of my memory.

11 Q By 300-foot provision, I mean a provision  
12 that would have -- would have reasserted the law that  
13 you can't establish a branch within 300 foot of  
14 another bank office to all banks.

15 A No, sir.

16 Q Are we singing from the same song sheet  
17 here?

18 A Yes, sir.

19 No, sir, that was not in that special  
20 session bill, because I worked on that too hard, it  
21 was not in there.

22 Q When you say it was not in that special

1 session bill, are you talking about the bill as  
2 introduced at the special session?

3 A Yes, sir. I'm talking about the bill which  
4 contained 16 state interstate reciprocity county  
5 contiguous banking, effective January 1 of the  
6 subsequent year. Also at the end of five years,  
7 contiguous countywide banking or county branch  
8 banking and full statewide banking at the end of 10  
9 years. That's the bill I'm referring to.

10 Q But we're talking about the bill as  
11 actually introduced at the special session?

12 A Yes, sir, that bill was introduced at the  
13 special session. That was the only items, bank  
14 legislation, to the best of my memory, that was  
15 handled in that special session.

16 Q Yes. Okay. But what I'm getting at sir,  
17 is, and maybe this would be an opportunity to  
18 backtrack a little.

19 A Okay.

20 Q But I'll see if I can clarify it before we  
21 move on. You say there was no -- there were -- there  
22 was no provision in the bill, the 1988 bill regarding

1 the 300-foot limitation?

2 A Yes, sir.

3 Q My question for you is, when you  
4 say -- when you referred to the bill, are you just  
5 talking -- are you talking about the bill that was  
6 actually considered during the special session?

7 A Yes, sir, and became law and was not  
8 amended.

9 Q Okay. So that bill as introduced and  
10 enacted did not contain a 300-foot provision; is that  
11 correct?

12 A That's correct, to the best of my memory.

13 Q Okay. As an aside, there were two bills  
14 actually enacted, Act 2 and Act 12. Do you recall  
15 this being the case?

16 A Act 2 and Act 12? I mean I can think one  
17 would have been a House bill and one would have been  
18 a Senate bill. And the House bill was the one that  
19 was signed into law, as I recall. And I don't -- I  
20 would not know of any other reason that there was any  
21 more than one bill.

22 Q Okay.

1 A We're still speaking of 1988, special  
2 session?

3 Q Yes, we are, sir.

4 A Okay, sir.

5 Q And when we're talking about the special  
6 session legislation, maybe we should stay focused on  
7 that session.

8 Now, you were president during that  
9 session; is that correct?

10 A No, sir.

11 Q You were not president in '88?

12 A I was president May of -- approximately  
13 midMay of '87 through midMay of '88.

14 Q Okay. Yes. During the special session, it  
15 was not -- you were not president?

16 A No, sir.

17 Q During your presidency, were you involved  
18 in any meetings or conversations or lobbying efforts  
19 to try to get a special session called?

20 A Yes, sir.

21 Q My first question is, and I apologize, this  
22 is a telephone deposition, so I can't show you this



1 record.

2 A Yes, sir.

3 Q I'm looking at a January 30 -- a Sunday,  
4 January 31st calendar entry for Bill Ford who was  
5 commissioner at that time.

6 A Right, sir, correct.

7 Q And there's an 8:30 p.m. meeting at the  
8 Governor's mansion regarding banking bill.

9 A Yes, sir.

10 Q Did you attend that meeting?

11 A I attended a meeting, and I do not recall  
12 whether it was at the Governor's mansion or the  
13 Governor's office, on some legislation with the bank  
14 commissioner and with the Governor and a couple  
15 members of his staff, as I recall.

16 Q Was it a Sunday evening meeting?

17 A Sir, I cannot recall whether it was or  
18 not.

19 Q Do you recall only being at one meeting?

20 A Sir, I couldn't say that -- I could have  
21 been at more than one meeting. I do not recall but  
22 one meeting with the Governor. But it's possible

1 that there would have been more than one.

2 Q Okay.

3 A I just cannot recall. I do specifically  
4 remember one meeting with the Governor.

5 Q Do you only recall -- can you say whether  
6 you were only at one meeting in which the Governor  
7 and the banking commissioner were involved?

8 A No, sir.

9 Q Okay.

10 A I could have been at two, but I'm not  
11 really clear in my mind whether it was one or two.

12 Q You do recall one meeting?

13 A Yes, sir, I do.

14 Q Could you tell me who were the participants  
15 in that meeting?

16 A As I recall, the Governor, Sam Bratton from  
17 the Governor's staff, Betsy Wright from the  
18 Governor's staff, the bank commissioner and myself.

19 Q Was Bo Carville there?

20 A I do not recall that he was, but he could  
21 have. I do not specifically remember him being  
22 present at the time that I met with the Governor and

1 his staff.

2 Q Do you recall if any representatives of  
3 Twin City Bank were there?

4 A I do not, sir.

5 Q I take it Bill Ford was the banking  
6 commissioner at this time?

7 A Yes, sir. Yes, sir, he was.

8 Q Do you recall if this meeting took place in  
9 the summer or the winter or the spring?

10 A To the best of my memory, it would have  
11 been early -- meaning early in the year of 1988. It  
12 could have been the latter part of '87, but I rather  
13 think it was the early part of 1988.

14 Q Is there any reason why you recall it being  
15 in I guess the winter months?

16 A No, other than it was in response to what  
17 had happened in Mississippi. And I'm trying to  
18 relate it to a time frame of how long I had been in  
19 office when that happened and in relationship to how  
20 long it took us to work out the details of a bill.

21 And I do recall that I spoke in all the  
22 group meetings in the month of March of 1988. So I'm

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1 trying to tie it to those type of things that I  
2 recall happening. So I know it would have been prior  
3 to March of 1988.

4 Q And you say it was in response to what had  
5 happened in Mississippi?

6 A Yes, sir.

7 Q I take it you're talking about the Fifth  
8 Circuit's decision upholding a controller of the  
9 currencies ruling regarding bank branching?

10 A That's correct, sir.

11 Q Do you recall when that decision was handed  
12 down?

13 A Not specifically. But based on the time  
14 frame of our response to it, I would think it would  
15 have been sometime during the year of 1987.

16 MR. PORTNOY: Do you recall, sir, if that  
17 was before or after you became president of the ABA?

18 The WITNESS: No, sir, I do not  
19 specifically.

20 MR. PORTNOY: Thank you.

21 BY MR. NAPPI:

22 Q And did you or your organization initiate

1 this meeting?

2 A It was initiated after a conversation that  
3 I had with the bank commissioner expressing my  
4 concerns about what potentially could happen in the  
5 State of Arkansas. As I recall, he probably made the  
6 appointment for us to meet with him. I do not recall  
7 personally making that contact.

8 Q And that would be Mr. Ford?

9 A Yes, sir.

10 Q Was Mr. Ford concerned about the  
11 Mississippi ruling?

12 A Yes, sir, it was my opinion that he was,  
13 based on the conversations I had with him.

14 Q I guess that would make sense since he  
15 regulated state banks, and this could have put state  
16 banks at a competitive disadvantage to national  
17 banks; right?

18 A Yes, sir, that's correct.

19 MR. PORTNOY: Can we go off the record for  
20 a second?

21 MR. NAPPI: Sure.

22 (Discussion off the record.)

1 BY MR. NAPPI:

2 Q Okay. Mr. Hartsfield, I am looking at a  
3 one-page document that's handwritten notes, Bates  
4 stamp number JRTS00002. These notes appear to be the  
5 handwriting of Sam Bratton. And on the top line, it  
6 says BC/Bo Carville, W. Hartsfield, January 25.

7 MR. PORTNOY: Can I interject for a moment,  
8 Doug, I don't mean to interrupt your questioning.  
9 But at least my copy of the notes don't indicate who  
10 wrote them and I'm curious --

11 MR. NAPPI: That's why I say they appear.  
12 I compared them against other handwriting that does  
13 have Mr. Bratton's.

14 MR. PORTNOY: So it's your deduction that  
15 this is Sam Bratton's handwriting?

16 MR. NAPPI: Yes.

17 MR. PORTNOY: Okay.

18 BY MR. NAPPI:

19 Q It's amongst the records that Mr. Portnoy  
20 forwarded to you.

21 A Okay, sir. I don't seem to find that,  
22 handwritten notes. I have -- no, sir, I do not. I

1 mean I can respond to it for a moment if you have a  
2 question about it.

3 Wait a minute. Wait a minute. That's the  
4 one that is very difficult to read. I can read some  
5 of the words, but it's very difficult.

6 Yes, sir. I am -- I do have that in front  
7 of me, but it's very difficult to read.

8 Q Could you take a moment to try to read it?

9 A Yes, sir. Those first two sentences are  
10 not legible. I can read the word Bowen.

11 MR. PORTNOY: Perhaps we can help you with  
12 reading it, sir.

13 BY MR. NAPPI:

14 Q Why don't I help you with the first line,  
15 which is opposition dash TCB, Walton Banks, union,  
16 maybe Bowen.

17 A Yes, sir.

18 Q Does seeing this record refresh your  
19 recollection as to this meeting?

20 A Is that a meeting -- I cannot recall where  
21 the meeting was, or I cannot see a date or a time  
22 where the meeting was.

1 Q The record I'm looking at says January  
2 25th.

3 A Okay, sir.

4 MR. PORTNOY: Sir, if we could perhaps  
5 start at the top of the document, the first line  
6 says, BC/Bo Carville, W. Hartsfield.

7 The WITNESS: Okay, sir.

8 MR. PORTNOY: The second line says January  
9 25, and the third line is the line that Mr. Nappi  
10 just read to you, which reads "opposition dash TCB,  
11 Walton Banks, union, maybe Bowen.

12 The WITNESS: That's entirely possible.  
13 What's the date on that, or is there a date?

14 BY MR. NAPPI:

15 Q January 25. They don't give a year. But  
16 in the right-hand corner, it says special session.

17 A Okay, sir. That's entirely possible at  
18 that juncture in January 25 of '88, if that's when it  
19 is.

20 Q Okay. But do you have a specific  
21 recollection of this meeting, a meeting with at least  
22 yourself, Bill Clinton and Bo Carville?



1 A That doesn't indicate it's a meeting, does  
2 it? It's possible that someone has conveyed that by  
3 telephone. I did have some conversations with Sam  
4 Bratton along that line. He may be relating that.

5 Q Do you recall ever conveying to Governor  
6 Clinton or anyone in the Governor's office that Twin  
7 City Bank opposed the special session legislation?

8 A Well, let me answer it this way. That  
9 initially and probably in January of 1988, I didn't  
10 have a -- as far as the legislation is concerned  
11 regarding the Arkansas Banker's Association, I had  
12 very little support from any of the Little Rock  
13 banks.

14 Q And why was that?

15 A Well, probably two or three reasons. In  
16 fact, I'd have to tell you that when the initiative  
17 was started, there was not a lot of support for it at  
18 all. And it was the most difficult thing you ever  
19 tried to put together.

20 But when I think as the bankers in the  
21 state began to see what was going to happen based  
22 upon branch operations filed, they saw that the

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1 banking bill as we were proposing was probably going  
2 to be better than what was going to happen without  
3 the banking legislation.

4 Q All right. But what about -- before you  
5 specifically mentioned the Little Rock banks, why  
6 were they in particular opposed at this point in  
7 time?

8 A Well, a number of them had filed branch  
9 applications and the others were preparing branch  
10 applications to be filed statewide.

11 Q Okay. Now, what about Twin City, as a  
12 state bank, it would not have been able to file those  
13 applications?

14 A Because they had filed some anyway, as I  
15 recall.

16 Q Well, the controller's ruling by definition  
17 would only apply to national banks, the controller, I  
18 understand that, sir.

19 A But they still were being filed, and that's  
20 what got the bank commissioner's attention.

21 Q Now, Twin City had filed some applications  
22 pursuant to the 1987 Pulaski County bill: is that

1 what you're thinking about, sir?

2 A No, sir. No, sir. No, sir. To the best  
3 of my memory, Twin City was filing branch  
4 applications just like national banks were filing  
5 branch applications. And I would not see the  
6 relevance or relationship to the Pulaski County  
7 special legislation that authorized countywide  
8 branching in only one county. I'm assuming that's  
9 what you're referring to.

10 Q Yes, sir. Suffice it to say that the  
11 committee has evidence of branch applications made by  
12 Twin City in its possession that relate to branches  
13 in Little Rock. I'm not aware of any such  
14 applications that we have outside of the Pulaski  
15 County area.

16 A Okay.

17 Q Personally I'm sort of confused.

18 A Okay. Sir, I could be incorrect. But it's  
19 my memory that they were filing applications outside  
20 the Pulaski County area. But I could be incorrect,  
21 but that is my memory.

22 Q All right. If I could direct your

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1 attention to another record --

2 A Yes, sir.

3 Q -- this one in the lower right-hand corner  
4 has the number JRTS00183. The first line says "May  
5 9."

6 A Wait. Just a minute, sir. Are you  
7 referring to a handwritten note?

8 Q Yes, sir.

9 A Sir, okay. Read a little bit more of it  
10 and see if I can locate it here.

11 Q Okay. The first line is May 9, it's  
12 underlined.

13 A Yes, sir, I found it.

14 Q Okay. Could you take a second to review  
15 this?

16 A Okay.

17 Q All right. You know what, I'm going to ask  
18 you to -- redirect you down to the middle of the  
19 page.

20 A Okay, sir.

21 Q There is a line that says banks against,  
22 and it's underlined.

1 A Yes, sir.

2 Q Can you read that?

3 A Yes, sir.

4 Q TCB is -- the first bank listed is that  
5 Twin City Bank?

6 A That's what I would think it is, yes, sir.

7 Q So do you recall having a conversation of  
8 this nature, either in person or on phone with Sam  
9 Bratton?

10 A Yes, sir.

11 Q You do recall the conversation?

12 A I do recall a conversation.

13 Q All right. Do you recall conveying this  
14 information to Mr. Bratton that Twin City Bank was  
15 opposed to the special session legislation?

16 A Well, there was so many banks, not to  
17 isolate Twin City, no, sir, I do not. I do know that  
18 there were a number of banks that had some very  
19 strong reservations about the legislation.

20 And I at that point in time early on, to  
21 the best of my memory, Twin City was one of a number  
22 of banks.

1 Q All right. But if we could focus for a  
2 moment on Twin City. Do you recall why they opposed  
3 it at this point? I mean -- at this point in time?

4 A Probably someone had told me or Ed Penick,  
5 Junior had told me, one of the two, and I do not  
6 recall which. It could have been someone else in  
7 banking.

8 Q Do you recall having reviewed this record,  
9 do you recall in May of 1988 what other banks opposed  
10 this legislation?

11 A May of 1988? According to this, Conners  
12 against, but McAdams say they won't work against.  
13 Hunt Howell and Jay Cross.

14 Q I take it those are individuals at banks?

15 A Well, let me identify. Bob Conners was  
16 president of Union National Bank. Herbert McAdams  
17 was his father-in-law and the chairman of the board  
18 of Union National Bank. And I had had conversations  
19 with both of those.

20 Q Okay. What about Hunt Howell?

21 A Hunt Howell was JB Hunt who had an  
22 ownership interest in a bank in Little Rock or north

1 Little Rock, one -- north Little Rock I guess at the  
2 time. And the charter was later moved to Little  
3 Rock.

4 Q What bank was that?

5 A It was -- what I remember it is the old  
6 First American Bank, and they changed the name of  
7 it. And right at this point, I cannot recall what  
8 name it was going by at that time.

9 Q Was it a state-chartered institution or a  
10 federally-chartered institution?

11 A The First American Bank? Sir, I'm sorry, I  
12 do not know.

13 Q Okay. If you could proceed.

14 A They had an interest in another bank  
15 someplace, as I recall, in Hot Springs. J. Cross,  
16 the only Cross that I can recall in banking is a  
17 banker from Eureka Springs. But I'm not sure of the  
18 first name, so that may or may not be.

19 I don't know if this is to the Governor at  
20 the time or to Sam Bratton. I couldn't say because  
21 I'm sure they were hearing from various bankers  
22 around the state anyway.

1 Q Other than these banks, were there other  
2 banks that you were aware of that opposed this  
3 legislation?

4 A Oh, yes, sir.

5 Q Why did you bring these four players to Sam  
6 Bratton's attention and not other ones?

7 A I don't know that I singled out those four  
8 players. He probably had conversation with me about  
9 the ones that had contacted him. And I probably  
10 acknowledged that it's a possibility, because there  
11 were a number of other bankers in the state that had  
12 reservations about one part of the bill or another  
13 part of the bill.

14 Q All right. Having seen these two records,  
15 now I realize you did not write these two records,  
16 but does this refresh your recollection as to other  
17 contacts or meetings that you had with Governor  
18 Clinton or his staff regarding this legislation?

19 A Not specifically, because I had more  
20 contacts with -- maybe I need to clarify something.  
21 When you say his staff, would you include the bank  
22 commissioner in that?



1 Q No. When I say his staff, I mean people  
2 who were actually in the office of the Governor.

3 A Actually in his office?

4 Q Yes.

5 A Not specifically, because more of my  
6 conversations would have been with the bank  
7 commissioner.

8 Q Okay.

9 A As we progressed, he would have had more  
10 liaison with the Governor than I would have had.

11 Q Now, you've previously testified as to an  
12 early 1988 meeting with the Governor and the  
13 commissioner and Mr. Bratton.

14 A Yes, sir.

15 Q And Betsy Wright.

16 A Yes, sir.

17 Q Do you recall the topic of conversation at  
18 that meeting?

19 A Yes, sir.

20 Q And what was that topic?

21 A To explain to the Governor what I was  
22 suggesting as some security type legislation, what I

1 saw as some devastation. And I don't mean total  
2 disaster, but I thought it was going to be  
3 devastating to Arkansas banks that if we allowed the  
4 competitive disadvantage to state banks versus  
5 national banks, obviously that that would be  
6 equitable in our state.

7 I did not think that it was good for  
8 Arkansas banks to just wholesale branching throughout  
9 the state, because history has proven that if the  
10 lead is taken off, all of a sudden that sometimes  
11 mistakes are made and banks in general get hurt in  
12 this type of an environment, and the customer gets  
13 hurt. And then it's not the best image for a state  
14 that goes into these kinds of things.

15 In other words, crisis is sometimes created  
16 out of these kinds of things. So I wanted to explain  
17 to him the bill that I thought would correct this. I  
18 told him that I thought it would be controversial  
19 initially, because there was language in it that  
20 every bank in the state wasn't going to like.

21 I told him I thought there would be  
22 opposition of various segments of banking. But I

1 wanted to go through the rationale with him as to why  
2 I felt like it was still in the best interest of the  
3 State of Arkansas, of banking in general that it be  
4 pursued. And he asked a number of questions about it  
5 and the reasons for specific things in the  
6 legislation.

7 Q So you had draft legislation at this point?

8 A I don't know at this point I had draft  
9 legislation. I could not say that. I had -- in my  
10 mind I had gone over with the bank commissioner some  
11 of the things and the thought process of what would  
12 need to be accomplished, and the only way that it  
13 could pass would be to include some of the things  
14 that some Arkansas banks were wanting to include,  
15 some of the things that probably he didn't want. But  
16 still it would be necessary.

17 I also explained to him that there would  
18 probably be oppositions in the savings and loan  
19 associations in the state. Because they were going  
20 to have to be brought under the same branching laws  
21 as banks were.

22 And it was just a discussion of the

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1 difficulty of the time we were facing, but what I saw  
2 as a solution to the problem.

3 Q Okay. So you don't recall having draft  
4 legislation prepared for this meeting?

5 A No, sir. As I recall, I probably did not  
6 at that meeting, but I could not say for sure.

7 Q Okay. Do you recall the questions that  
8 Governor Clinton asked?

9 A Yes, sir.

10 Q What were those questions?

11 A First he wanted to understand why we were  
12 being placed in that situation. I can recall the  
13 general question, not the specific questions to  
14 clarify that.

15 Q Yes, I understand that.

16 A He wanted to have an understanding about  
17 why Arkansas was being placed in that position, he  
18 wanted to have an update on the federal case  
19 involving the Deposit Guaranty and the Fifth Circuit  
20 decision as to why it was applicable to Arkansas.

21 He had some questions about the competitive  
22 disadvantage between national banks and state banks,

1 which the bank commissioner and I clarified it. He  
2 was concerned about the part of interstate banking.

3 He felt like that needed to be --  
4 definitely needed to be included in it if we were  
5 going to be looking at it. He specifically was clear  
6 that he was not -- did not have any interest in  
7 calling a session unless there was a high majority of  
8 the banks that would finally come to the point that  
9 they would agree to support the legislation, because  
10 he did not want to call a special session and have  
11 nothing but a fight among the bankers.

12 Those are some of the things that come to  
13 my memory.

14 Q So he was at this point in time hesitant to  
15 call a special session unless you could demonstrate  
16 significant support within the industry?

17 A Oh, he was pretty adamantly against it at  
18 that point. He did not give me very much hope to be  
19 honest with you.

20 Q Did he ask about specific questions and  
21 whether he supported the proposal?

22 A I'm not sure if I knew at that point in

1 time because there was not any need to go out and  
2 solicit the report unless I had some indication. But  
3 I wanted some parameters to work within. So, you  
4 know, I don't know that I could have answered that.

5 I anticipated that there would be  
6 opposition, and specifically on the interstate  
7 reciprocity position of it from independent bankers.  
8 And I was correct, there was.

9 Q Fair enough. Now, this is the only meeting  
10 that you specifically recall with Governor Clinton?

11 A I can't answer that, to the best of my  
12 memory that that is the only one or wasn't the only  
13 one. It's possible we had another one. I know that  
14 the bank commissioner had a lot more contact with the  
15 Governor and his staff.

16 And particularly on the specifics, we did  
17 get the legislation drafted. And it's possible that  
18 I had a meeting with he and his staff or at least  
19 with his staff, and I -- with the bank commissioner  
20 after we got the legislation drafted. I just  
21 honestly do not recall.

22 Q Who drafted --

1 A I do not remember that.

2 Q Who drafted the legislation?

3 A I'm sorry?

4 Q Who drafted this bill, the initial draft of  
5 the --

6 A A lawyer Bird was the -- wait, I'll tell  
7 you his first name. We had a Washington attorney  
8 that gave us some input. And at this point I cannot  
9 recall his name. But he was given to me by one of  
10 the law firms in Little Rock as a person who had  
11 special expertise in banking legislation.

12 We used his counsel and a Mr. Bird in  
13 Little Rock who was also an attorney who had drafted  
14 some bank legislation. So it was a combination of  
15 two or three attorneys. And then some of the  
16 attorneys in Little Rock looked at it and gave  
17 input. And I do not recall who they were. But I  
18 know that I had a lot of input.

19 Q Okay. Mr. Bird was with the Rose law firm;  
20 is that correct?

21 A I believe that's correct, sir.

22 Q Do you recall when the initial draft was

1 prepared?

2 A No, sir, not specifically on a date. I do  
3 not, sir. It would have been sometime in the  
4 first -- the first six months of '88. But a specific  
5 month, I could not identify a date.

6 Q Now, earlier you testified as to a March  
7 meeting of the Arkansas Banker's Association; is that  
8 correct?

9 A Yes, that's correct, sir.

10 Q Was the draft legislation prepared in time  
11 for that meeting?

12 A It probably was. If not, I had knowledge  
13 of the salient features that would be in the draft of  
14 the legislation which I discussed at those group  
15 meetings.

16 Q Do you recall whether the initial draft  
17 contained a provision that would have reimposed the  
18 300-foot rule on all banks?

19 A To the best of my knowledge, it did not.

20 Q Do you recall if any subsequent drafts did?

21 A To the best of my knowledge, they did not.

22 Q Was this ever an issue, the 300-foot rule



1 and reimposing it?

2 A The only time it was an issue that I can  
3 recall was at a CEO meeting in Little Rock when we  
4 had the CEOs of all of the banks there.

5 Q And this meeting was held under the  
6 auspices of the Arkansas Banker's Association?

7 A It was under the auspices of the bank  
8 association, the Arkansas Banker's Association, the  
9 Arkansas Association Holding Company, and the  
10 Independent Bankers Association, we did it.

11 They were on the podium with me. I  
12 presided the meeting, but the president of those two  
13 associations were on the podium with me.

14 Q So it was the ABA, the holding company  
15 association and the independent bankers?

16 A Yes, sir.

17 Q And this was held in Little Rock?

18 A Yes, sir.

19 Q Do you recall what month?

20 A No, sir, I do not. May have been in --  
21 some of these documents appears to say something  
22 about it. But I do not recall the month, but it

1 would have been after the group meetings.

2 Q So it would have been after March?

3 A Yes, sir.

4 Q And the 300-foot rule came up at this  
5 meeting?

6 A Yes, sir.

7 Q Could you explain how?

8 A Mr. Bowen raised it and asked that it be  
9 included into the legislation. And the group voted  
10 not to include it.

11 Q Mr. Bowen was the president of First  
12 Commercial?

13 A That's correct, sir.

14 Q Why did he want it included?

15 A I do not know the answer to that, sir. I  
16 assume so that someone couldn't be within 300 feet of  
17 his bank.

18 Q You never discussed it with him?

19 A Oh, yes, sir.

20 Q And he didn't offer a rationale?

21 A He just said he didn't think it was fair.

22 There was a period of time in Arkansas when there was

1 this kind of legislation on the books, and he was  
2 relating back to that.

3 Q But isn't it true it was still on the books  
4 for all banks other than in banks in Pulaski County?

5 A Sir, I'm sorry, I do not think so. I  
6 thought it was rather opposite on the special  
7 legislation for Pulaski County. But I'm not familiar  
8 with any state law currently that says you cannot  
9 have a branch within 300 feet of another main office.

10 Q Yes, that's not what I was getting at,  
11 sir. What I meant was -- all right. Maybe at this  
12 point we should back up for a minute.

13 Do you recall the Arkansas legislature  
14 considering and passing the 1987 law regarding  
15 Pulaski County?

16 A I do.

17 Q Do you have a copy of that in front of you?

18 A Let me look and see. I have an act 539, a  
19 proposed House bill 1828. And I'm assuming that's  
20 what you're referring to.

21 Q Yes, I'm referring to act 539.

22 A Yes, sir, act 539.

1 Q If you could bear with me one moment.

2 A Yes, sir.

3 Q Okay. On page -- I'm looking at a page at  
4 the bottom right-hand corner, it has the designation,  
5 I believe it's LASB253.

6 A I have it, sir.

7 Q Could you take a second to read this page?

8 A All of the page?

9 Q Yes.

10 A Okay, sir.

11 Q Or as long as you need. I'm sorry I didn't  
12 mean to put a one second --

13 A Okay, sir.

14 (Witness reviews the document.)

15 The WITNESS: Okay, sir.

16 BY MR. NAPPI:

17 Q Okay. If I could direct your attention to  
18 section 2-A --

19 A All right.

20 Q -- which lays out the rule for bank  
21 branching in counties of populations with over  
22 200,000 people.

1 A Yes, sir.

2 Q Now, that was -- that applied only to  
3 Pulaski County; is that correct?

4 A That is my understanding at the time. And  
5 based on my knowledge of the state, that would be  
6 only applicable to Pulaski County.

7 Q Okay. And in this provision, there's no  
8 limitation on location of branches including the  
9 limitation on locating within 300 feet?

10 MR. PORTNOY: There certainly is.

11 MR. NAPPI: Where?

12 The WITNESS: Well, section 2-A puts the  
13 300-foot restriction. If I may read that, "within  
14 the corporate limits of the city or town in which  
15 established banks main office is located, provided  
16 that no such branch shall be located closer than 300  
17 feet to the main office of any other bank."

18 BY MR. NAPPI:

19 Q But that applies to section 1-B; is that  
20 not correct?

21 MR. PORTNOY: 2-B.

22 The WITNESS: That would be applicable.

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1 BY MR. NAPPI:

2 Q 2-B.

3 A The 200,000 inhabitants. And I would not  
4 interpret that to be applicable to the other 74  
5 counties in the State of Arkansas.

6 MR. NAPPI: Can we go off the record for a  
7 minute?

8 The WITNESS: Yes, sir.

9 (Discussion off the record.)

10 BY MR. NAPPI:

11 Q Do you recall subsequent to the passage of  
12 act 539 Twin City Bank opening a branch in -- or  
13 branches in Little Rock?

14 A Let me think just a minute.

15 (Pause.)

16 The WITNESS: No. No, sir, I do not. I  
17 know there was some litigation started or threatened  
18 to be started. And I do not know whether they  
19 actually started.

20 BY MR. NAPPI:

21 Q Okay. Do you recall the nature of the  
22 litigation?

1 A It was a challenge of this legislation, of  
2 this act as I recall.

3 Q Do you recall who brought the lawsuit?

4 A Yes, I recall it was Commercial National  
5 Bank.

6 Q Why did Commercial National Bank sue Twin  
7 City?

8 A I assume they did not want a branch over  
9 there. But I do not know the answer to that.

10 Q Do you recall them contesting the placement  
11 of Twin City's branch within 300 feet of its branch?

12 A Would you repeat the question, please?

13 Q No, I withdraw that question. I withdraw  
14 that question.

15 A Okay. I'm sorry I didn't understand it.

16 Q At this point continuing with act 539, the  
17 1987 act.

18 A Yes, sir.

19 Q Do you recall whether the ABA supported  
20 this act?

21 A It's my memory that the Arkansas Banker's  
22 Association did not take a position on it.

1 Q Do you know why the Arkansas Banker's  
2 Association did not take a position?

3 A It's the best of my memory that the  
4 association considered it special interest  
5 legislation for only a limited number of banks and  
6 for one county. And we didn't feel like that we  
7 should be getting into that kind of a legislative  
8 posture.

9 Q Who was the -- was there one bank in  
10 particular that was pushing this legislation?

11 A I do not recall, because I really was not  
12 involved at all in that process for or against it. I  
13 did not take a personal position, neither did the  
14 association, to the best of my knowledge. So I do  
15 not know that.

16 Q You don't know if Twin City Bank was a  
17 supporter of this legislation?

18 A I do not, no, sir. I just wasn't involved  
19 in it at all.

20 Q Was your association, was the banker's  
21 association involved in it in any?

22 A To the best of my knowledge, we took a



1 neutral position, I mean the association did.

2 Q Did Mr. Carville work in support of it or  
3 against it?

4 A Well, he -- you know, I couldn't answer  
5 that. But he should not have. If the association  
6 took a neutral position, he shouldn't have taken a  
7 position either way. But I do not know  
8 specifically.

9 Q All right. If we could refocus for a  
10 moment on the 1988 bill. The bill that you worked so  
11 hard to pass.

12 A Yes, sir.

13 Q Right now I'm looking at a record that is  
14 Bates stamp JRTS00491. It's a memorandum titled  
15 office of the Governor memorandum. It's from Sam to  
16 Governor and Betsy. It's dated April 25, 1988.

17 And I'd like to read from this memo to  
18 you.

19 A Okay, sir. I do not have that.

20 Q I understand that. I understand that.  
21 Frankly I don't think faxing it to you is much help.  
22 The copy that I'm looking at is not that good, and it

1 would not be fax friendly, if you will.

2 A Okay.

3 Q It says, "Bowen called this morning to  
4 inquire as to what I thought were the possibilities  
5 for a special session. His assessment based on  
6 discussions primarily with First Commercial's  
7 correspondent banks is that an overwhelming majority  
8 of the banks in the state are expressing support for  
9 the proposed legislation, but that many of them are  
10 paying lip service to agreeing and continuing to  
11 gripe about various specific provisions of the bill,  
12 and that most of them are not really working that  
13 hard on their legislators. He also said it was his  
14 impression that TCB is attempting to be a spoiler."

15 Can you add anything to this? Can you  
16 elaborate on the conflict that is described in this  
17 memo?

18 A Yes. I would say that there is a portion  
19 of it that I have knowledge of that is accurate. Any  
20 time that you have legislation that was as complex as  
21 this and encompasses as many things as this, and I  
22 knew this from the beginning, that it was going to be

1 difficult to get people to, meaning, people meaning  
2 bankers to support it in its entirety.

3 Because there would be a little bit of it  
4 in public statements that I made to bankers  
5 throughout the state. I said I understand that, you  
6 know, that there's going to be a portion of this you  
7 do not like.

8 But, you know, my encouragement to them was  
9 let's get all of this and settle it at one time  
10 because we had to buy significance in banking.

11 When you have a bill that encompasses these  
12 many things, it's difficult to get everyone to agree  
13 on all aspects of it, and that was true in this  
14 case. So from that standpoint, I think Mr. Bowen's  
15 comments are accurate.

16 And I cannot know what he has reference to  
17 with the Twin City comments. I don't know what  
18 reference he is making there pro or con. I don't  
19 know whether they're for it or against it to be  
20 honest with you.

21 Q I would read his characterization of  
22 them -- of Twin City acting as a spoiler, I would

1 read to be opposition, that they're trying to stop  
2 this legislation.

3 A I do not know. It's possible, but I do not  
4 know that.

5 Q All right. Right now I'm looking at a  
6 record dated June 20th, 1988. It's on the stationery  
7 of the Arkansas Banker's Association. It's addressed  
8 to the Honorable Bill Clinton. It's signed by Sloan  
9 Rainwater.

10 A Yes, sir.

11 Q Who I take it was your successor?

12 A That's correct, sir.

13 Q The last paragraph of this letter to  
14 Governor Clinton says, "this legislation and the need  
15 for a commercial session, we can assure you will be  
16 in the best interest of the public of Arkansas."

17 The last substance of that paragraph says,  
18 "we respectfully request and urge that you call a  
19 special session of the general assembly to deal with  
20 this issue to be held within the next 30 days."

21 Now, I would read this letter -- I would  
22 read from this letter that Governor Clinton still did

1 not support a special session of the legislature as  
2 late as June 20th; is that correct?

3 A That would be my recollection. And based  
4 upon that letter and that date, I would not know any  
5 other reason that the letter would have been written  
6 other than continuing to urge him to call the special  
7 session.

8 Q Do you know why he was still hesitant to  
9 call a special session?

10 A Well, I think it goes back to the reason  
11 that I related a few moments ago, that he was still  
12 concerned that there was a loose coalition of banks,  
13 even though we felt like we had the support.

14 I think he was concerned that it would be a  
15 divisive issue and some of the bankers would not  
16 support it once the special session was called and  
17 might not pass. I'm sure that that was a concern he  
18 had.

19 Q Yes. In that same letter, if I can read to  
20 you again, and I do apologize for reading to you --

21 A That's all right.

22 Q -- in a earlier paragraph, it says, "we

1 have met your conditions in regards to calling the  
2 special session. This includes signature evidence or  
3 contacts made directly and reported by your office of  
4 65 members of the House and 25 members in the  
5 Senate.

6 "There are commitments of support from  
7 five of the six members of the Senate Insurance and  
8 Commerce Committee, and 15 of the 20 members of the  
9 House committee."

10 Now, do you recall Governor Clinton setting  
11 certain conditions as far as demonstrations of  
12 support for this legislation?

13 A I do not recall that he gave us specific  
14 numbers. He did indicate to us that he wanted a high  
15 majority of the banks supporting it and a commitment  
16 certainly from more than a majority of both the House  
17 and the Senate, as well as the respective House and  
18 Senate committees that would be dealing with the  
19 legislation. I do not recall whether he gave us a  
20 specific number or not.

21 Q Do you have any knowledge as to why this  
22 letter would then say "we have met your conditions in

1 regard to calling the special session"?

2 A Well, I don't know that we ever had any  
3 written conditions, you know. I think he certainly  
4 verbalized that to us along those terms that I've  
5 just enumerated that would certainly give us reason  
6 to where we had to be with the votes and the  
7 support.

8 Q Was it your impression that as of the  
9 beginning of the summer of 1988 in the June time  
10 period, you had demonstrated the type of support for  
11 this legislation that the Governor had requested as a  
12 necessary condition to calling the special session?

13 A It's my opinion that we had, yes, sir.

14 Q Okay. And the bank commissioner supported  
15 your proposal for a special session?

16 A Yes, sir, he did.

17 Q What about Sam Bratton, did he seem to be  
18 supportive of your desire for a special session?

19 A It's my impression as time moved along that  
20 Sam Bratton did become more supportive of the special  
21 session.

22 Q What about Betsy Wright?

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1 A It's my impression that she was not as  
2 supportive of the Governor calling a special  
3 session.

4 Q Why do you think Betsy Wright was not  
5 supportive?

6 A I think she was concerned from the  
7 viewpoint of the possibility that the Governor would  
8 call a special session, the bankers would get into a  
9 squabble or some would try to amend the legislation  
10 and they'd be down there for an extended period of  
11 time.

12 And honestly in our statement, the public  
13 does not respond well to those kinds of things.  
14 They're not very responsive to the special sessions,  
15 and they're certainly not responsive to legislation  
16 or staying there for an extended period of time. So  
17 I would base -- my knowledge of the situation was  
18 that it would have been a concern of hers.

19 Q And what about the Governor, he remained  
20 hesitant, I take it?

21 A The think the Governor remained hesitant  
22 until close to the time that he called the session



1 frankly.

2 Q What issues did the Governor -- was the  
3 Governor concerned about?

4 A I think the issues that I've just  
5 enumerated that, again, that he had concerns that  
6 once the session was called that there would be  
7 divisiveness, that there would be some who might try  
8 to amend the legislation, and that again it would be  
9 down there and be a glorified extended session.  
10 That's my opinion on that, but I certainly can't  
11 speak for him. But that's certainly my opinion.

12 Q And what issues did he feel were going to  
13 be contentious? Do you know?

14 A Yes. The interstate banking portion of it,  
15 the independent bankers were opposed to. I think  
16 that issue probably more than anything else, the  
17 savings and loan league opposition, because they were  
18 being brought in under the same wrenching  
19 requirements as the banks were being brought in with  
20 countywide, and then five years contiguous county and  
21 contiguous statewide, certainly they could go to a  
22 statewide at the present time. I think those were

1 two primary concerns that the Governor would have  
2 had.

3 Q Okay. Right now I'm looking at a calendar  
4 entry for July, Tuesday, July 5th, 1988. It's  
5 Commissioner Ford's calendar. There are two items  
6 listed for this day; one is a notation, special  
7 session called for July 11, 1988, and then there's an  
8 entry that says 9/30 GOV.

9 Do you recall attending a 9 -- or a meeting  
10 at the Governor's office on July 5th?

11 A I had not recalled it until you mentioned  
12 that. But I do recall that I was asked to be down  
13 there. I do recall that now.

14 Q Do you recall the participants in that  
15 meeting?

16 A No, sir. I do recall the bank commissioner  
17 was there and I was there; but passed that, no, sir,  
18 I do not.

19 Q Was Mr. Bowen there?

20 A I just couldn't answer positively or  
21 negatively. To my memory, he was not. I do not  
22 recall any of the bankers there, but there could have

1 been some.

2 Q Was Betsy Wright there?

3 A I would think that she probably was.

4 Usually she was in any conference like this on  
5 anything that I had ever attended there, so I would  
6 think yes. But I specifically could not answer  
7 that.

8 Q Sam Bratton?

9 A Again, the same, because they had both  
10 worked on this with the bank commissioner, so I think  
11 that he was there also.

12 Q Terry Renaud?

13 A Not to my knowledge.

14 Q Ed Penick?

15 A Not to my knowledge.

16 Q Any member of the Rose law firm?

17 A I just cannot recall whether we had an  
18 attorney there or not. No, sir, I --

19 Q Mr. Bird?

20 MR. PORTNOY: Wait a minute.

21 The WITNESS: I do not recall, sir.

22 BY MR. NAPPI:

1 Q Web Hubbell, was he there?

2 A No, sir, I know that he was not there.

3 Q Was Bruce Lindsey there?

4 A Not to my memory.

5 Q Do you know who Cliff Hofman is?

6 A I'm sorry?

7 Q Cliff Hofman, H-O-F-M-A-N.

8 A Yes, sir, he is a states senator.

9 Q Was he at that meeting?

10 A I do not recall that he was there. I would  
11 not know of any reason that he should have been  
12 there.

13 Q Do you recall the topic of conversation --

14 A Yes, sir.

15 Q -- at that meeting?

16 A Yes, sir.

17 Q Could you tell me what it was?

18 A To review again the final draft of the  
19 legislation so that the Governor had a complete  
20 understanding and knowledge of it and the thought  
21 process behind each of the specific sections of the  
22 bill so that he could also answer that.

1 I guess, as much as anything, a reassurance  
2 that the bank coalition was in place to support the  
3 bill, and that we would resist any amendments to the  
4 proposed bill. Those are the areas that come to my  
5 mind that he was specific about.

6 Q Did he seem very concerned about possible  
7 amendments?

8 A I don't know that I could say real  
9 concerned, but he did have concern that he knew that  
10 if we got into an amendment process that that was  
11 going to create real problems and perhaps cause an  
12 extended session that he specifically did not want.

13 So he certainly encouraged us, as he said  
14 he would be, to resist any amendments, because he  
15 wanted this process to flow through. And he wanted  
16 the legislation to get through so the session could  
17 be adjourned.

18 Q All right. I'm looking at a memo Bates  
19 stamp JRTS00195. It's dated July 5, '88, it's to  
20 GOV from Betsy re: banker's bill.

21 MR. NAPPI: Let's go off the record for one  
22 minute.

1 (Discussion off the record.)

2 BY MR. NAPPI:

3 Q I'm going to read this memo to you.

4 A Okay, sir.

5 Q It says -- and it's CC'd to Sam. And the  
6 author again is Betsy.

7 A Okay.

8 Q And it's to GOV, "neither Sam nor I  
9 understands what your next step/follow-up with Bill  
10 Bowen is on the 300-foot issue. The bill which is  
11 being delivered to this office in the morning by the  
12 Banker's Association/Bill Ford, does not contain  
13 300-foot provision based on their conversation with  
14 you this morning."

15 Do you recall a conversation about the  
16 300-foot provision?

17 A I recall a conversation that I had with  
18 Mr. Bowen about the 300-foot provision.

19 Q What about with Governor Clinton?

20 A I do not recall whether I had a  
21 conversation or didn't have a conversation. It's  
22 possible that I did or some member of the staff. But

1 I couldn't be specific whether it was the Governor or  
2 a member of his staff or who it was. I had so many  
3 conversations with so many people right in that time  
4 frame.

5 Q What did you talk to Mr. Bowen about?

6 A I didn't talk to him. He talked to me. He  
7 wanted me to tell him that I would include that in  
8 the legislation. And I told him that I would not.

9 Q Did he elaborate on it? Did he discuss?

10 A Well, he wasn't very happy with me, I guess  
11 that's the portion of the elaboration.

12 Q Did he -- did a majority of the banks in  
13 your association support Mr. Bowen's position on  
14 this?

15 A No, sir, they did not. At the CEO meeting,  
16 that's the only time I had a good reading of it.

17 Q Okay. Do you recall anything else about  
18 this conversation with Mr. Bowen?

19 A No, not specifically. No, not  
20 specifically, I do not.

21 Q All right. And you don't recall conveying  
22 this to Governor Clinton or his staff?

1 A It's possible that I did. I cannot  
2 specifically state whether I related it to him. I  
3 probably did to the Governor or a member of his staff  
4 or the bank commissioner. And I could not be  
5 specific.

6 I just do not recall which one of those I  
7 probably talked to. I could have even talked to more  
8 than one of them.

9 Q I'm looking at another record. It's  
10 another July 5th, 1988 memo to the GOV, from Betsy,  
11 and again Sam is CC'd.

12 A Okay, sir.

13 Q It's Bates stamp 00381, JRTS00381. And I'd  
14 like to read to you from this. It's regarding Cliff  
15 Hofman.

16 A Yes, sir.

17 Q It says, "everybody keeps misstating his  
18 position. He has never said he was against the bill,  
19 only against the special session for it. Says the  
20 300-foot deal has to go." And there's a handwritten  
21 arrow leading to a handwritten note that says "I  
22 agree."



1 Now, Senator Hofman is indicating that the  
2 300-foot deal has to go.

3 A It was never in there.

4 Q Well, wouldn't -- that's my question. Does  
5 that change your recollection, and if something  
6 is -- has to go, it would seem to predicate that it's  
7 actually in the bill.

8 A I think there was confusion in the state  
9 from time to time as I spoke to various groups about  
10 this. And I think maybe even some confusion in the  
11 press, confusing the -- what I refer to as the  
12 Pulaski County Bill of '87 and this proposed  
13 legislation, because there was so much talk about the  
14 300 feet and the litigation that had either been  
15 filed or had been discussed about being filed  
16 publicly that it caused people to get confused  
17 between the two.

18 But to the best of my memory, 300 feet was  
19 never in the 1988 bill and never agreed to be put in  
20 the 1988 bill. And, you know, I don't know on the  
21 periphery what might have been going on to cause them  
22 to feel otherwise.

1 MR. NAPPI: Why don't we go off the record  
2 for a minute?

3 The WITNESS: Okay, sir.

4 (Discussion off the record.)

5 BY MR. NAPPI:

6 Q All right. I'm going to try to do this by  
7 reading to you in the interest of saving time. This  
8 is a letter from -- this is a letter from Mr. Penick  
9 to Marlin Jackson who by then was back at First State  
10 Bank & Trust.

11 A Okay, sir.

12 Q It's a May 23rd, 1988 letter. The  
13 pertinent part of the letter from Mr. Penick says  
14 that -- well, it refers to the litigation between TCB  
15 and First Commercial. It says, "initially drafts of  
16 the omnibus banking bill were circulated which were  
17 consistent with TCB's bank initiatives made possible  
18 by act 539 of 1987. A meeting was held by the  
19 Arkansas Banker's Association on April 14th, 1988, a  
20 meeting to which TCB was not invited.

21 "At that meeting, we understand  
22 representatives of First Commercial inserted a

1 300-foot provision which was calculated to interfere  
2 with our established capital avenue branch. A  
3 grandfather clause was included but its wording may  
4 be insufficient to protect that operating branch."

5 Do you recall --

6 A I do not agree with that analysis.

7 Q Okay.

8 MR. PORTNOY: Could you elaborate on that,  
9 sir?

10 The WITNESS: Yes. We never agreed at the  
11 CEO meeting, and that's what I would interpret that  
12 reference to be, that it was -- that the 300 feet was  
13 inserted back in there.

14 I think as I testified earlier that issue  
15 was raised and the CEOs in the state did not support  
16 putting that 300-feet provision back in this  
17 legislation.

18 BY MR. NAPPI:

19 Q Do you have any understanding of why  
20 Mr. Penick might have been so concerned then?

21 A No, sir, I did not.

22 Q I have one more records.

1 A Okay, sir.

2 Q And I apologize again for the litany of  
3 records I'm reading to you. This is JRTS00206. It's  
4 a handwritten note, and it says, "Bill, it has been  
5 reported to me your assistance on the omnibus  
6 banker's bill and the 300-foot provision, and I  
7 wanted to relay our appreciation for taking this  
8 stand. Terry and I can't understand why Mr. Bowen  
9 feels so threatened by our little office in Capitol  
10 Tower. It is almost a back-handed compliment that he  
11 thinks we are that good. Thanks for your support and  
12 friendship, Ed." And it's dated 7/5.

13 A I've never seen that.

14 Q No, I expected that you had not. I read it  
15 to you to see if it helped you place it in time.

16 A No, my position on the bill from day 1, and  
17 it's a commitment -- and I think this might help your  
18 perspective from my vantage point.

19 My commitment to the bankers in the state  
20 was that I would not support, neither would I  
21 encourage support from bankers if special interest  
22 legislation was a part of this bill, because I

1 thought that it would make it extremely difficult to  
2 pass.

3 I thought it would be subject to court  
4 challenge. And I didn't think it was fair to be  
5 placed in this kind of a wide-spreading changing bill  
6 for Arkansas banking. And that was a public  
7 statement that I made from time to time as I spoke to  
8 bankers.

9 Q I would say that's an excellent strategy.

10 A And I stayed with that.

11 Q But my question for you is, at this July  
12 5th meeting, was there any discussion -- obviously  
13 from what I've read to you, there was a conflict  
14 between First Commercial and Twin Cities.

15 A Yes, sir.

16 Q Both sides were trying to get it resolved  
17 in their favor; is that correct?

18 A I would think that's probably accurate.

19 Q Did this issue come up during this July  
20 5th, 1988 meeting?

21 A If it did, I certainly took the position  
22 that I would resist any attempt to amend the

1 legislation for any special interest, whether it be  
2 TCBY, Independent Bankers, First Commercial or any  
3 others, that's a commitment that I made to the  
4 Governor, the commitment I made to Arkansas banks.

5 Q Okay. But my question is, do you recall  
6 this issue actually coming to the floor in July of --

7 A Well, it very easily could have in the  
8 context of a potential amendment.

9 Q Is that --

10 A It's not something that jumps out at me as  
11 being the sole issue that was discussed or a single  
12 issue, but it could have very easily have come up in  
13 the conversation of the context of someone  
14 potentially trying to amend the bill.

15 Q Do you know if someone was shopping an  
16 amendment around, or is this hypothetical?

17 A I never saw an amendment. I think the bank  
18 saw the support that we had and as a matter of  
19 record, it passed the Senate with only three negative  
20 votes. And as I recall, it passed the House with  
21 fewer negative votes. And there's 100 members in the  
22 house. So I think that tells you that we had the

1 support that we told the Governor we had.

2 Q Do you recall having any meetings with the  
3 Governor subsequent to the July 5th meeting?

4 A The July 5th meeting was prior to  
5 the -- prior to the session if I'm recalling.

6 Q Yes, the session started I believe on July  
7 12th.

8 A Not to my knowledge, or one that I recall.

9 Q Was Terry Renaud a supporter of Governor  
10 Clinton's?

11 A I would not know that, sir.

12 Q Was Ed Penick a supporter of Governor  
13 Clinton's?

14 A I would not know that either, sir.

15 Q Do you know that TCB bank shares controlled  
16 First Ozark Bank of Lipid?

17 A Yes. Let me first. First -- I do know  
18 that they had a bank at Lipid. Let me state it that  
19 way.

20 Q Did you know that First Ozark held a  
21 mortgage on property owned by the Whitewater  
22 Development Corporation?

1 A I did not until I read it in the news  
2 account of it within the last -- perhaps the last  
3 year.

4 Q Did you have any knowledge that Governor  
5 Clinton or Mrs. Clinton had a lending relationship  
6 with First Ozark?

7 A None whatsoever, until I read the news  
8 accounts of it within the last, some period of  
9 months.

10 MR. NAPPI: All right. I don't think I  
11 have any further questions at this point.

12 Could we go off the record for a few  
13 minutes?

14 The WITNESS: Yes, sir.

15 (Discussion off the record.)

16 EXAMINATION

17 BY MR. PORTNOY:

18 Q Mr. Hartsfield?

19 A Yes, sir.

20 Q Good afternoon, sir. My name is Jim  
21 Portnoy, and I'm counsel for the Minority.

22 A Yes, sir.



1 Q I have just a few questions to follow-up on  
2 Mr. Nappi's questions.

3 A Okay, sir.

4 Q You testified earlier that Governor Clinton  
5 tried to work out some kind of arrangement in advance  
6 of the special session so that no amendments would be  
7 offered to the banking bill?

8 A What he did is encourage us or tell us that  
9 he did not want to call a special session of the  
10 legislature and then some group that might come in  
11 and oppose it and try to amend the legislation.  
12 Because, first of all, it would -- it could be  
13 divisive. And secondly, it would extend that  
14 session.

15 So, yes, his mandate to us was that I do  
16 not want the bill amended.

17 Q Do you recall if the bill was amended?

18 A No, sir, it was not amended.

19 Q So the bill was enacted as it was  
20 introduced?

21 A Yes, sir.

22 Q Do you recall how far in advance of the

1 special session the final bill was drafted?

2 A No, sir, not specifically. I'm going to  
3 just say my best estimate would be 30 to 40 days  
4 prior to the special session. That's my best  
5 estimate.

6 Q By the time you met with the Governor on  
7 the 5th of July, the bill was already in final form?

8 A To the best of my memory, it was.

9 Q And no changes were made in that  
10 intervening period?

11 A To the best of my memory, there were no  
12 changes made.

13 Q Sir, you testified that you recall a  
14 meeting with Governor Clinton, some of his staff, the  
15 bank commissioner, Mr. Ford, and that the meeting  
16 occurred sometime early in 1988.

17 A Yes, sir.

18 Q Was this the first time, to your knowledge,  
19 that the idea of an omnibus bank bill was put on the  
20 Governor's radar screen?

21 A To the best of my knowledge, that is the  
22 first time. Somewhere in that time frame.

1 Q Was it you or your organization that  
2 brought the matter to the Governor's attention either  
3 directly or through his staff?

4 A I think I probably did first to the banking  
5 commissioner and requested the meeting after. And he  
6 I had a conversation and I told him what some  
7 possibilities that I thought would be -- that could  
8 be included in this type of legislation that I  
9 thought would have hurt, some disaster things, and I  
10 thought that could happen in Arkansas banking.

11 MR. PORTNOY: Let's go off the record for a  
12 second.

13 (Discussion off the record.)

14 BY MR. PORTNOY:

15 Q Before we went off the record, I believe  
16 you indicated that it was your recollection that  
17 either you or your staff first made the Governor  
18 aware of the possible need for a wide-ranging banking  
19 bill in 1988.

20 A Well, it would have been -- I would have  
21 done it. It would not have been the staff. I would  
22 have done it, along with the bank commissioner. He

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1 could have had a conversation with the Governor  
2 before, but I do not recall that he did or did not.

3 Q I believe you also testified, sir, that the  
4 impetus or precipitating event for your concern was a  
5 federal court decision in Mississippi?

6 A Yes, sir.

7 Q And following that decision, you began to  
8 initiate the process of crafting legislation?

9 A Yes, sir.

10 Q For the State of Arkansas?

11 A Yes, sir.

12 Q Did you take the lead in the development of  
13 that legislation?

14 A I took the lead in the process of  
15 addressing the issue and giving some alternatives  
16 that I thought would need to be included in -- and I  
17 refer to it in the omnibus banking bill because of  
18 the number of issues that it addressed. Yes, I did  
19 that.

20 Q Did you retain counsel to draft the  
21 legislation?

22 A We had a number of attorneys involved and

1 the attorney for the state bank development. There  
2 were a number of attorneys -- there were all kinds of  
3 drafts floating, various interests wanted to draft  
4 it.

5 And then as I testified earlier, and I do  
6 not recall his name, we had counsel -- an attorney in  
7 Washington that I talked with who had drafted a  
8 number of bank legislation bills. He had some  
9 Arkansas ties. And he gave us some suggestions.

10 So to say that one specific attorney  
11 drafted it all, I don't know that I could, because it  
12 had so many inputs from the legal community, from so  
13 many various interests, bank counsels, a bank counsel  
14 of various banks --

15 Q Would you say that --

16 A -- or bank departments.

17 Q Would you say that your organization  
18 coordinated the effort?

19 A I'd say that we coordinated it, yes, with  
20 input coming from every direction. Because, again,  
21 it was going to be effecting so many different facets  
22 of banking that everyone had some interest in it once

1 they saw that we were going to move forward with it.

2 Q Let me ask this in a colloquial way,  
3 Mr. Hartsfield.

4 A Okay.

5 Q Who had the disk? In other words, who  
6 actually had possession of the materials that  
7 ultimately were cobbled together to form the omnibus  
8 bill?

9 A I don't know that I could identify one  
10 person. I know that Candice Franks, who is counsel  
11 at the State Department of the bank -- sorry, the  
12 State Bank Department. I know that Mr. Bird who was  
13 an attorney for the Arkansas association of bank  
14 holding companies. Various other attorneys who just  
15 at this point in time, their names do not quickly  
16 come to me. But I don't know that there was any one  
17 person.

18 Perhaps Mr. Bird may have written the final  
19 draft or Candice Franks, and I just do not recall  
20 which. But probably Mr. Bird had more input than  
21 anyone. But Candice Franks certainly had input into  
22 it. And it was reviewed by everyone in sight.

1 Q So by any definition, this was a collective  
2 effort?

3 A Oh, yes, positively.

4 Q No one bank or S&L could have had it --

5 A Well, I think if --

6 Q -- could have controlled the process?

7 A I think it's a commitment that I made to

8 all Arkansas banks, assembled it through group

9 meetings and any other place that we had the CEO

10 meetings.

11 You know, there wasn't any bank that could

12 have their way, because it was going to be applicable

13 to every bank in the State of Arkansas. And every

14 bank was going to be affected by some degree by it.

15 Q And to the best of your knowledge, sir, the

16 provisions that were placed in the bill were derived

17 by consensus?

18 A They were derived by a consensus of bankers

19 at a CEO meeting in Little Rock, yes, sir.

20 Q Consensus doesn't mean unanimously

21 necessarily?

22 A No, sir, but we final got it to the point

1 of about 80 percent of the banks in the state that

2 responded supporting it. But, you know, again, I

3 agree with your assessment.

4 Q Do you recall Twin City Bank playing any

5 kind of lead role in the formulation of the banking

6 legislation?

7 A No, sir, to my knowledge, they did not, as

8 any other bank that was dominant in it, to my

9 knowledge.

10 Q Did you ever come to suspect that any bank

11 or S&L had special influence over the Governor or the

12 Governor's office with respect to this legislation?

13 A I did not.

14 Q In particular, sir, did you have any reason

15 to believe that TCB had special influence with the

16 Governor or the Governor's office?

17 A No, sir, I did not.

18 MR. NAPPI: What do you mean by special

19 influence?

20 BY MR. PORTNOY:

21 Q Did you have any reason to believe that any

22 bank or S&L had a back channel to the Governor's



1 office?

2 A Not to my knowledge.

3 Q So to the best of your knowledge, the  
4 process of crafting this legislation was open and  
5 above board?

6 A Well, it was done by the bankers of the  
7 state and everyone had an opportunity to have input  
8 into it. So, you know, I did not have any knowledge  
9 that any special interest group had any dominant  
10 influence in it at all.

11 Q You also testified, sir, that the banker's  
12 association did not take a position on the 1987  
13 legislation that we've been calling act 539?

14 A That's correct, to the best of my knowledge  
15 and memory.

16 Q Was that because the legislation had a  
17 limited geographic coverage?

18 A Yes, it's because it was applicable, as I  
19 understood it at the time, and as I think the bankers  
20 in the state understood it, was applicable only to  
21 Pulaski County.

22 And as we had historically done, we tried

1 not to take positions on what we considered to be  
2 special interests legislation, and I would deem that  
3 to be in that category.

4 Q So one type of special interest legislation  
5 in your recollection was legislation that involved  
6 only a narrow geographic portion of the state or a --

7 A Applicable only to one county in the state,  
8 yes, sir.

9 Q So the banker's association didn't make a  
10 judgment one way or the other about the wisdom of act  
11 539?

12 A That's correct, to the best of my memory.

13 Q When you described this as special interest  
14 legislation, you didn't mean that the bill was  
15 somehow improper, did you, sir?

16 A No, I was not saying that. What I mean  
17 special interest is that it referred only to -- well,  
18 200,000 is limited to Pulaski County. And when I  
19 said special interest, I'm meaning that it's -- it  
20 could only affect that county, and there's 74 other  
21 counties with banks in every county within the state  
22 that wouldn't be covered by it. So that's what I'm

1 having reference to by special interest.

2 Q Sir, in your meetings with the Governor or  
3 the Governor's staff, did you ever get the impression  
4 that they were catering to a particular bank or S&L?

5 A I never --

6 MR. NAPPI: Wait. Wait. How would he get  
7 the impression? Why don't you ask him if he made  
8 reference to specific banks?

9 MR. PORTNOY: I was actually asking a  
10 broader question, but I'd be glad to ask both.

11 BY MR. PORTNOY:

12 Q Did anyone on the Governor's staff or did  
13 the Governor ever express to you particular concern  
14 about the preferences of any single institution?

15 A No, sir, not to my memory.

16 Q Did you ever come to believe that the  
17 Governor or the Governor's staff was trying to  
18 accommodate the interests of a particular  
19 institution?

20 A By institution, you mean by a specific  
21 bank?

22 Q Bank or S&L.

1 A No, sir, I did not.

2 MR. NAPPI: Would it have been relevant to  
3 your purpose in visiting the Governor?

4 The WITNESS: Would it have been relevant  
5 to my purpose?

6 MR. NAPPI: Yes.

7 The WITNESS: From my specific standpoint,  
8 I didn't have a specific interest in any specific  
9 bank.

10 MR. NAPPI: Yes. You were trying to pass  
11 or build a coalition behind a particular piece of  
12 legislation; is that correct?

13 The WITNESS: I was trying to pass a bill  
14 that would be applicable to all banks in the State of  
15 Arkansas without any special interest. And by that,  
16 again, I mean that there wouldn't be any preferential  
17 treatment given to any specific bank in the state.

18 MR. NAPPI: Did you make any inquiry to the  
19 Governor or his staff about the specific institutions  
20 and whether they were trying to help any  
21 special -- specific institutions?

22 The WITNESS: Say that again, please.

1 MR. NAPPI: I was just asking, and I  
2 apologize for interrupting Mr. Portnoy's questions.

3 But Mr. Portnoy has asked you a lot about  
4 special interest legislation and your opinions as to  
5 whether specific -- whether specific institutions  
6 were being catered to.

7 I guess my question for you is, did you ask  
8 anyone -- the Governor or anyone in the Governor's  
9 office whether they were specifically catering to any  
10 specific institution.

11 The WITNESS: No, sir, I did not. I didn't  
12 have any reason to, because I certainly didn't have  
13 any interest in appeasing a specific institution.

14 BY MR. PORTNOY:

15 Q And I take it you also didn't have any  
16 reason to believe they were catering to any specific  
17 institution?

18 A I didn't sense that at all.

19 Q Mr. Hartsfield, one of the documents I sent  
20 you is the first page of a newsletter from the  
21 Arkansas Banker's Association.

22 A Yes, sir.

---

100

1 Q Do you have that, sir?

2 A I do. Let me find it.

3 Q Dated April 18th, 1988.

4 A I recall having seen it here. Let me find  
5 it. All these fax pages do not turn easily.

6 MR. NAPPI: You got the flimsy, shiny  
7 stuff?

8 The WITNESS: Yes, sir.

9 Okay, sir, I have it in front of me.

10 BY MR. PORTNOY:

11 Q Okay, sir.

12 A April 18, 1988; right?

13 Q Yes, sir. And I would direct your  
14 attention to the first paragraph.

15 A Yes, sir.

16 Q And the first paragraph refers to a bank  
17 CEO meeting a few days earlier.

18 A Yes, sir.

19 Q Was that the CEO meeting you've been  
20 referring to during your testimony?

21 A Yes, sir, it was, or it is.

22 Q The document then states that you wrote to

1 every bank CEO in the state urging immediate contact  
2 with senators and representatives to support the  
3 omnibus banking bill. Do you recall doing that?

4 A Yes, sir.

5 Q So you reached out to every banking  
6 institution in the state?

7 A That's correct, sir.

8 Q Did that include nonmembers?

9 A I did not handle the mailings, so I would  
10 not know the answer to that. I would assume that it  
11 went to every member bank. But I would not know the  
12 answer to that, because it was handled through the  
13 association office.

14 Q I notice you urged the CEO to contact  
15 senators and representatives --

16 A Yes, sir.

17 Q -- legislatures as opposed to the Governor  
18 or the Governor's office.

19 A Yes, sir.

20 Q Was it your view that the impediment to  
21 enactment of this bill was likely to be the  
22 legislature rather than the Governor's office?

1 A Positively.

2 Q So the Governor's office was supportive  
3 provided you could line up the votes?

4 A That's correct, sir.

5 Q Did that ever change?

6 A I'm sorry?

7 Q Did that ever change, your view that the  
8 Governor's office was supportive?

9 A Well, I never did feel like I had the real  
10 support of the Governor's office until near the end  
11 of the process that we had gone through as bankers,  
12 because he had never indicated to me he was going to  
13 call the session until he I think began to see  
14 evidence that we were going to get that support.

15 Q So you never felt that you had a commitment  
16 from the Governor to take any action --

17 A I did not.

18 Q -- until such time as he was convinced that  
19 the bill would be enacted without substantial  
20 opposition?

21 A Without substantial opposition and/or  
22 amendment.



1 Q One last question, sir.

2 A Yes, sir.

3 Q The concept of branch banking for  
4 state-chartered banks was not new in 1987 when the  
5 legislation we've been calling act 539 was enacted,  
6 was it, sir?

7 A I'm not sure I'm understanding the  
8 question, sir.

9 Q Let me phrase it differently.

10 A Okay, sir.

11 Q In 1987, legislation was enacted to permit  
12 branch banking or the expansion of branch banking in  
13 Pulaski County?

14 A Yes, sir.

15 Q Had the concept of expanding branch banking  
16 been discussed in banking circles prior to 1987?

17 A There had -- no, not a lot of discussion.  
18 Legislation on the books at the time that was  
19 applicable to all 75 counties said that a  
20 charter -- chartered bank within corporate city  
21 limits could branch within a five-mile radius of the  
22 corporate limits of that respective incorporated city

---

1 or town.

2 There had been some interest from various  
3 groups around the state that would like to see that  
4 expanded. But to say that there has ever been a lot  
5 of momentum in that area, I couldn't say. Some of  
6 the larger banks were some of the ones that wanted to  
7 branch -- to change the branching laws. But I  
8 couldn't say that there was a lot of momentum prior  
9 to that.

10 Q Do you know what Commissioner Jackson's  
11 view on the matter was?

12 A No, I really do not.

13 Q Would it surprise you to learn that we have  
14 a document dated May 27th, 1986 which recounts a  
15 conversation in which Commissioner Jackson mentioned  
16 that in his opinion, it was time for somebody to  
17 foster legislation to permit countywide branching?

18 A That really wouldn't shock me, but I did  
19 not know that.

20 Q You don't have any reason to dispute that,  
21 do you, sir?

22 A No, sir, I do not.

1 Q So it would be fair to say that there was  
2 at least some discussion?

3 A Oh, that was -- yeah, that's what I just  
4 testified to, that there had been some discussion  
5 about it. And I -- whether it originated with the  
6 bank commissioner or some of the banks in the state,  
7 I just do not recall exactly where it came from.

8 MR. PORTNOY: Thank you, Mr. Hartsfield.  
9 Those are all my questions. I appreciate your taking  
10 the time.

11 The WITNESS: Yes, sir.

12 EXAMINATION (Continued)

13 BY MR. NAPPI:

14 Q Mr. Hartsfield, did you receive the fax?

15 A Yes, sir, I did.

16 Q Do you have it in front of you?

17 A I'm sorry, sir?

18 Q Do you have that fax in front of you, the  
19 two-page fax?

20 A Yes, sir, I do.

21 Q Can you identify this record from just this  
22 cover page and the page 16?

1 A No, sir.

2 Q You don't recall having seen a black line  
3 draft like this previously?

4 A Well, I saw so many drafts of that thing  
5 from the time we started until we stopped that I  
6 could not know. No, sir, I cannot identify this  
7 specific.

8 Q Okay. If I could ask you to look at  
9 page 16 or the page that is marked 16.

10 A The page that is marked 16. Okay, sir, I  
11 have that.

12 Q Section IV, paragraph B.

13 A Yes, sir.

14 Q If you take an opportunity -- if you take a  
15 moment to just review that --

16 A Yes, sir.

17 Q -- the clause after the first parentheses.

18 A Yes, sir, I see. Your having me reference  
19 the 300 feet. No, sir, I don't recall having seen  
20 this before.

21 Q Okay. So you don't have any recollection  
22 of ever seeing a draft that -- you'd agree with me

1 that this -- that this draft does contain language  
2 relating to the 300-foot issue and that -- I'm  
3 assuming this is standard black lining prior to the  
4 changes marked. This would have precluded any bank  
5 from locating a bank within 300 feet of the principal  
6 banking office of another bank?

7 A Yes, sir. There were numerous drafts of  
8 this proposed legislation floating. But to say that  
9 I specifically saw one with this in it, I do not  
10 recall it.

11 Q You only recall what you recall. I  
12 understand that.

13 A Yes, sir.

14 Q I just wanted to clarify a couple other  
15 things before we go off the record.

16 A Okay.

17 Q Marlin Jackson, do you have any specific  
18 recollection of him taking a position on the Pulaski  
19 County branching bill?

20 A No, sir, I do not.

21 Q Okay. And Mr. Bird was an attorney for the  
22 Arkansas Association of Bank Holding Companies?

1 A Yes, sir.

2 Q And you don't have any recollection of  
3 whether Twin City was a member of that organization?

4 A No, sir, I do not.

5 Q Do you have any -- and I apologize if I  
6 asked this previously.

7 With respect to the July 5th meeting with  
8 the Governor, you have no recollection of any mention  
9 of Twin City Bank?

10 A There was so many banks involved. To say  
11 that Twin City was isolated in any way, shape or form  
12 or fashion, I do not.

13 Q Okay. And you don't recall any discussion  
14 or -- or do you recall any discussion of the 300-foot  
15 issue?

16 A The only way that that could have been in  
17 the conversation would have been if someone tries to  
18 amend it to put 300 feet back in it. My position was  
19 and to my understanding it was the Governor's  
20 position and every one of the bank commissioners  
21 position and the two who sponsored the bill, the  
22 senator and the house member that was carrying the

1 bill, that we would resist any amendment to the  
2 legislation.

3 So if that came up -- and it's possible  
4 that it did, I do not specifically recall. But if it  
5 did, that was our position on it.

6 Q And you still recall the July -- not the  
7 final draft as introduced, but the drafts prior to  
8 that not containing the 300-foot language?

9 A Well, again, there were so many drafts out  
10 there. Any draft that I had in my possession that I  
11 was personally supportive of in a leadership  
12 position, I do not recall the 300 feet being in  
13 there.

14 There could have been numerous drafts out  
15 there, and it's possible that it had it in more than  
16 one of those drafts. But I was not supportive of  
17 that position.

18 Q Okay. All right. Earlier I read you a  
19 letter from Ed Penick to the Governor thanking him  
20 for his support on the issue.

21 A Yes, sir.

22 MR. PORTNOY: Just for the record,

1 Mr. Penick did not agree that that letter was  
2 necessarily to the Governor. He indicated that it  
3 could have been to Bank Commissioner Ford. It was  
4 simply addressed to Bill.

5 MR. NAPPI: That -- I don't recall  
6 Mr. Penick's testimony. But since it was produced to  
7 us by the -- by the Governor's archivist, and it was  
8 CC'd to Sam and no one else, I would argue --

9 MR. PORTNOY: You're entitled to your  
10 interpretation. I'm just pointing out Mr. Penick's  
11 testimony.

12 MR. NAPPI: Fair enough.

13 BY MR. NAPPI:

14 Q Nevertheless, I read you that letter, the  
15 note from Ed Penick to Governor Clinton --

16 MR. PORTNOY: To Bill.

17 BY MR. NAPPI:

18 Q To Bill. If there was such strong support  
19 against inclusion of 300-foot language, why  
20 would -- why would Mr. Penick need to thank Bill  
21 specifically?

22 A I do not know that, sir.



1 MR. NAPPI: Okay. I have no further  
2 questions.

3 EXAMINATION (Continued)

4 BY MR. PORTNOY:

5 Q Last question from me, then we can all get  
6 out of here. You testified that the Governor's  
7 office took a consistent position against amendments  
8 of any kind in the special session; is that correct?

9 A Yes, sir.

10 Q And that one amendment that could  
11 conceivably have been discussed was the 300-foot  
12 language?

13 A Yes, sir.

14 Q Other than the possibility that someone  
15 might introduce 300-foot language as an amendment,  
16 did either the Governor or anyone on his staff ever  
17 express to you an opinion either for or against a  
18 300-foot limitation?

19 A It's my memory that we would resist all  
20 amendments. I do not recall that anyone made any  
21 commitment from the -- anyone from the Governor's  
22 staff making any kind of commitment like that.

1 I do recall that a statement was made by, I  
2 don't know whether it was the bank commissioner or a  
3 member of his staff that certainly we did not want  
4 any special interest legislation -- no, not  
5 legislation, special interest language or an  
6 interpretation that could be considered special  
7 interest language in the legislation.

8 So, you know, I think that was my  
9 understanding, the position of all parties, the  
10 Governor, the bank commissioner and certainly my  
11 position.

12 Q Sir, let me try and narrow down your answer  
13 if I might.

14 A Okay, sir. I didn't mean to be rambling on  
15 it, but...

16 Q Not at all, sir. You're just giving us  
17 more than we anticipated.

18 Putting aside the question of amendments to  
19 the final legislation that was to be introduced at  
20 the special session, did the Governor's office or the  
21 Governor ever express an opinion regarding the  
22 substance of a proposed 300-foot limitation?

1 A I do not recall whether he did or didn't  
2 honestly.

3 Q So you have no recollection of that subject  
4 arising in any of your discussions with the Governor  
5 or his staff?

6 A Well, I'd have to say that it's possible  
7 that it came up from the standpoint of -- if it did,  
8 it would be considered special interest. So, you  
9 know, that was my earlier testimony, so I couldn't  
10 say that it was never an item that was discussed.  
11 But if it was in that vein, certainly we didn't want  
12 special interests in there.

13 Q And once again when you refer to special  
14 interests, you're referring to legislation?

15 A That's of an interest only to one bank or  
16 one or two banks that would give them some perceived  
17 competitive advantage over another.

18 Q I believe earlier you stated when you  
19 referred to special interests, you meant legislation  
20 that might have a geographic limitation?

21 A That could be considered special interest  
22 also.

1 MR. PORTNOY: Okay, sir, thank you.

2 EXAMINATION (Continued)

3 BY MR. NAPPI:

4 Q I have one more follow-up, and it goes to  
5 the special interest issue.

6 Act 539 you said was special interest  
7 legislation in your association's view; is that  
8 correct?

9 A In my opinion, yes, and it's the opinion  
10 that I understood that the association had also.

11 Q Okay. And it gave banks within Pulaski  
12 County competitive advantage over other banks?

13 A Well, competitive or the possibility of  
14 that. It's -- yes, it relates or refers to a  
15 specific geographic area which could be considered a  
16 special advantage.

17 Q Okay. Now, if someone introduced proposed  
18 legislative language to do away with this -- with the  
19 rules established by act 539, that would be special  
20 interest, in essence, you're turning over a law that  
21 provides certain benefits to certain institutions in  
22 one county in the state?

1 A Well, my answer would be as long as it was  
2 not disadvantageous to other banks and gave one bank  
3 a specific advantage over other banks.

4 Q I'm not sure I follow you there.

5 A Well, I'm not sure that I totally  
6 understood your question and maybe that's the reason  
7 my answer is not clear.

8 Q Okay. If someone was looking to overturn  
9 act 539, which was special interest legislation --

10 A Okay, sir.

11 MR. PORTNOY: Based on his definition and  
12 his assumptions?

13 MR. NAPPI: Yes, we can only ask him about  
14 in his mind. He was the president of the  
15 association.

16 BY MR. NAPPI:

17 Q If someone is looking to overturn special  
18 interests legislation, would that be special  
19 interests legislation? I mean if someone is looking  
20 to reapply the 300-foot rule to banks in Pulaski  
21 County, is that special interest legislation?

22 A I have to think through that. I'm not sure

1 that I'm totally following you. I guess I'm a little  
2 bit confused on the question still.

3 Would it be a special interest if someone  
4 overturned it? As long as they put it -- my answer  
5 is as long as all banks were placed back on an equal  
6 footing, it would not be special interests in my  
7 opinion.

8 MR. NAPPI: Fair enough. I appreciate it.  
9 I don't have any further questions.

10 The WITNESS: Okay, sir.

11 MR. PORTNOY: Thanks, Mr. Hartsfield.

12 The WITNESS: You're quite welcome.

13 MR. NAPPI: Thank you very much. Bye.

14 MR. PORTNOY: Good by, sir.

15 The WITNESS: Bye, sir.

16 (Whereupon, at 4:56 p.m., the deposition was  
17 concluded.)

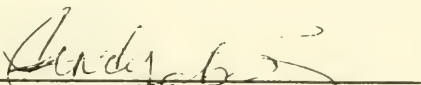
18  
19 -----  
20 WAYNE HARTSFIELD  
21  
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, CINDY L. SEBO, the officer

before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires FEBRUARY 14, 2000





**DEPOSITION OF SUSAN SISK GROBMYER  
IN RE: S. RES. 120**

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**WEDNESDAY, MAY 8, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of SUSAN SISK GROBMYER,  
called for examination pursuant to notice of deposition, at 5:18 p.m.  
in Room 640-A of the Hart Senate Office Building, before CINDY  
L. SEBO, a Notary Public within and for the District of Columbia,  
when were present:

MICHAEL P. O'CALLAGHAN, Esq.  
Majority Associate Special Counsel  
JAMES S. PORTNOY, Esq.  
Minority Associate Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

DAN BOLAND, Esq.  
5800 R Street  
Little Rock, Arkansas 72207  
On behalf of the Deponent.

**ALSO PRESENT: JEFF WINTER**

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## 1 PROCEEDINGS

2 MR. O'CALLAGHAN: Good afternoon,  
3 Mrs. Grobmyer. My name is Mike O'Callaghan, I'm an  
4 associate special counsel for the Special Committee.  
5 And with me also are members of the minority staff  
6 who I will let introduce themselves.

7 MR. PORTNOY: Hello, Mrs. Grobmyer. My  
8 name is Jim Portnoy, I'm counsel for the Minority.  
9 And I have with me Jeff Winter of our staff as well.

10 THE WITNESS: Hi.

11 MR. O'CALLAGHAN: Okay. This afternoon's  
12 telephone deposition is being conducted pursuant to  
13 Senate Resolution 120. The resolution establishes a  
14 special committee administered by the Banking  
15 Committee to conduct an investigation involving  
16 Whitewater Development Corporation, Madison Guaranty  
17 Savings & Loan Association, Capital Management  
18 Services, Inc. and other related matters.

19 This deposition is in advance of public  
20 hearings, which are actually occurring right now. We  
21 are going to ask you a series of questions today, ask  
22 you to testify under oath.

---

4

1 If you don't understand a question, let us  
2 know, and we'll be happy to rephrase it. In  
3 addition, if you have any trouble hearing us, please  
4 ask us to repeat what we've said, and we'd be happy  
5 to do that as well.

6 THE WITNESS: Okay.

7 MR. O'CALLAGHAN: And in addition, if you  
8 need a break at any time, let us know, we'll be happy  
9 to accommodate you.

10 THE WITNESS: Okay.

11 MR. O'CALLAGHAN: We have a stenographer  
12 with us today who is preparing a record of questions  
13 and answers. The deposition will be treated as  
14 committee confidential until the commencement of  
15 hearings, which may be a moot point considering the  
16 hearings are going on presently.

17 If you are called to testify at a public  
18 hearing, you'll be permitted to have a copy of your  
19 deposition transcript in advance of your testimony if  
20 the transcription of the deposition is available by  
21 the time of the hearings. So as soon as we get it,  
22 we'll get it to you, is basically how it works.



1 And you'll be able to make, review the  
2 transcript and make any note of corrections for  
3 transcription on an errata sheet.

4 You may be represented by counsel today.

5 Do you understand that?

6 THE WITNESS: Yes.

7 MR. O'CALLAGHAN: And are you represented  
8 by counsel?

9 THE WITNESS: Yes.

10 MR. O'CALLAGHAN: Counsel, could you please  
11 state your full name and the name of your firm for  
12 the record?

13 MR. BOLAND: Dan Boland, B-O-L-A-N-D. I'm  
14 not associated with any other attorneys.

15 MR. O'CALLAGHAN: Okay. Objections to the  
16 form of questions will be noted for the record.  
17 Counsel may object on grounds of privilege or  
18 relevance.

19 The Committee Chairman may rule on  
20 objections where the witness refuses to answer a  
21 question.

22 Could you please swear the witness?

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1 Whereupon,

2 SUSAN SISK GROBMYER  
3 was called as a witness and, having first been duly  
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. O'CALLAGHAN:

7 Q Mrs. Grobmyer, could you please state and  
8 spell your full name for the record?

9 A Okay. Susan, S-U-S-A-N, Sisk, S-I-S-K,  
10 Grobmyer, G-R-O-B-M-Y-E-R.

11 Q Okay. And is Sisk your maiden name?

12 A Sisk. Yes, uh-huh.

13 Q Okay. Have you spoken to anyone other than  
14 your counsel prior to this deposition about the  
15 anticipated substance of the deposition?

16 A No.

17 Q Have you spoken with anyone at the White  
18 House?

19 A No.

20 Q Did you do anything to prepare for this  
21 deposition today?

22 A No.

- 1 Q Have you reviewed any documents?  
2 A No.  
3  
4  
5  
6 Q And are you a high school graduate?  
7 A Yes, I am.  
8 Q Do you have any schooling after high  
9 school?  
10 A I have college, two years.  
11 Q Could you just give me a brief description  
12 of your education background?  
13 A Of what college I attended or --  
14 Q Yes, ma'am.  
15 A University of Arkansas at Monticello,  
16 that's M-O-N-T-I-C-E-L-L-O.  
17 Q And what years did you attend there?  
18 A '68 and '69.  
19 Q Okay. Do you have any professional  
20 licenses?  
21 A No.  
22 Q Are you currently employed?
- 

- 1 A Yes.  
2 Q And where are you employed?  
3 A Pulaski, P-U-L-A-S-K-I, Bank.  
4 Q And how long have you been employed there?  
5 A Since July of 1995.  
6 Q Okay. And what is your current position?  
7 A Senior vice president over commercial  
8 lending.  
9 Q And has that been your title since you  
10 arrived at the Pulaski Bank?  
11 A Yes, sir.  
12 Q Prior to your position at Pulaski Bank,  
13 where were you employed?  
14 A Twin City Bank.  
15 Q For what time period?  
16 A I was there for 16 years. I started in  
17 '79, 1979.  
18 Q What was your position at Twin City Bank,  
19 and if it changed, if you could just tell me what  
20 position you left at what time?  
21 A When I left Twin City Bank, I was senior  
22 vice president commercial real estate lending.

1 Q And during what time period did you hold  
2 that position?

3 A This is approximate. I think I was senior  
4 vice president for about five years prior to  
5 leaving.

6 Q So was that approximately 1990 through  
7 1995?

8 A Approximately, yes.

9 Q And previous to that, what was your  
10 position?

11 A It was vice president, commercial lending  
12 real estate.

13 Q And when did you hold that position?

14 A Probably four years prior to being senior  
15 vice president.

16 Q Okay. So approximately again 1986 through  
17 1990?

18 A Approximately.

19 Q Okay. And how about previous to that?

20 A Assistant vice president.

21 Q Okay. You made your way through the  
22 ranks.

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10

1 A Yes, right. I was possibly in it for  
2 probably two years, and then I was officer, just, you  
3 know, an officer of the bank prior to that.

4 Q During the time that you were a  
5 vice president of commercial lending, could you give  
6 me a brief overview of what your responsibilities  
7 were in that position?

8 A I was responsible for the -- I managed our  
9 commercial lending area. And I had other people that  
10 reported to me, business development, officers  
11 reported to me. The -- there were probably five,  
12 again, this is approximate, loan officers that  
13 reported to me.

14 And I approved loans that were over  
15 their -- that were under -- that were over their  
16 authorities. And I also handled commercial real  
17 estate loans for the bank.

18 Q Okay. And what level loan would be above  
19 the loan officer's authority?

20 A Most loan officers at that time  
21 were -- their loan authority was \$150,000 or below.

22 MR. PORTNOY: I'm sorry, I may have missed

1 something, Ms. Grobmyer. Did you specify a time  
2 frame? You said at that time.

3 THE WITNESS: Well, it changed. I guess  
4 the way the commercial loan department was structured  
5 changed probably in '92 or '91, where they instead of  
6 being commercial loan officers, they were called  
7 market managers. And they reported a different  
8 route. They did not report directly to me at that  
9 time, the loan officers.

10 You know, I was over the training programs,  
11 still business development and commercial real  
12 estate. And I would still approve, you know, loans  
13 over their authority. But I did not manage the  
14 commercial lenders. They reported to a different  
15 group later on.

16 BY MR. O'CALLAGHAN:

17 Q Okay. Again, during the time when you were  
18 a vice president of commercial lending, did you serve  
19 on any committees or boards or review panels?

20 A At Twin City Bank?

21 Q Yes, ma'am.

22 A I was on the Officer's Loan Committee. And

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12

1 I may have been on the marketing committee. I was on  
2 that at one time, I don't remember if it was during  
3 the -- when I was vice president or assistant  
4 vice president. But those are the only two that I  
5 recall serving on.

6 Q Okay. And prior to the time when you were  
7 vice president for commercial lending, did you serve  
8 on any other boards or committees?

9 A No. The only ones I recall serving on were  
10 the Officer's Loan Committee, and possibly the  
11 marketing committee. And that was all.

12 Q Okay. And was that an Officer's Loan  
13 Committee for Twin City Bank or for an affiliate?

14 A It was for Twin City Bank.

15 Q Okay.

16 A Your question was what committees I served  
17 on at Twin City Bank, was it not?

18 Q Yes, ma'am.

19 A Okay.

20 Q My next question is, did you serve on any  
21 committees for any other institutions?

22 A I served on the Officer's Loan Committee at



1 First Ozark National Bank of Flippin.

2 Q And how long did you serve on that  
3 committee?

4 A I really don't recall; approximately  
5 started '89 or '90. I really don't remember when we  
6 started doing that.

7 Q Okay. We don't have the documents in front  
8 of you yet. But I'd like to identify a document  
9 which we do have in our possession. This might help  
10 refresh your recollection.

11 And it's a one-page document, which bears  
12 two Bates stamps, I'll refer to one of them which is  
13 CBF0402. And it's a one-page document entitled,  
14 "First Ozark National Bank Director's Loan Committee  
15 Minutes, December 7th, 1987."

16 A Okay.

17 Q And in the portion of the document that  
18 lists the members who were present, it lists Lyle  
19 Wood, Chairman, Kyle Alexander, Kern Powers, Wes  
20 Strange and Susan Sisk. Then also present were Ron  
21 Proctor and Vernon Dewey, and that's dated December  
22 1987.

1 Does that refresh your recollection as to  
2 approximately what time that you served on the First  
3 Ozark's Director's Loan Committee?

4 A I just don't remember the date, you know,  
5 when it started.

6 Q But --

7 A But that would sound right, correct. I  
8 just -- you know, time flies.

9 Q Okay. Was there a relationship that  
10 existed between Twin City and First Ozark Bank?

11 A Was there a what?

12 Q A relationship between the two banks.

13 A They were affiliated -- they were in the  
14 same holding company.

15 Q What was the name of the holding company?

16 A TC Bank Shares. Yes, TC Bank Shares, I  
17 think.

18 Q Okay. And was -- did one bank have  
19 authority over any of the operations of the other?

20 A Well, that's hard to answer. From a loan  
21 side of it, each one of the affiliate banks had what  
22 we termed a senior lender assigned to it.

1 So I was called the senior lender for the  
2 bank in Flippin. And being senior lender, I would  
3 approve the loans that went to officer's as loan  
4 committee prior to them going to the Director's Loan  
5 Committee.

6 Q So were you -- for purposes of those  
7 meetings, were you the Twin City representative at  
8 those meetings?

9 A Yes.

10 Q So with respect to the approval of the  
11 loans, at least at the Officer's Loan Committee  
12 level, you had authority to approve or disapprove the  
13 loans?

14 A Right. That's correct.

15 Q How many people would serve on the officer  
16 loan committee, or served?

17 A At Flippin?

18 Q Yes, ma'am.

19 A I don't really remember how many people  
20 were on it. I don't know -- I wasn't on the  
21 Officer's Committee. I was on the Director's  
22 Committee. It went to the officer -- the loan went

1 to the Officer's Loan Committee before it went to the  
2 Director's Loan Committee.

3 I would have had to review it and approve  
4 it at that point. So I didn't serve on the  
5 Officer's. I served on the Director's.

6 Q Okay. But at what point did you review  
7 it? Did you review it before it went to the  
8 Officer's Loan Committee, at the same time or  
9 afterwards?

10 A Afterwards, primarily.

11 Q So if the Officer's Loan Committee had  
12 already signed off on it, then they would forward it  
13 to you before it was considered by the Director's  
14 Loan Committee?

15 A If I was going to be at the meeting, I  
16 would see it at the same time the director's saw it.  
17 If I was not going to attend the meeting, they would  
18 fax it to me, and I would approve it or disapprove it  
19 or condition it.

20 Q So in order for a loan to be approved, you  
21 had to make a determination on it before the board  
22 voted on it?

1 A Sometimes I would do it after the board,  
2 you know, after it went to the Director's Loan  
3 Committee, and they could override me.

4 They could take it to the full board. If I  
5 declined something and they wanted to pursue it, they  
6 could take it to the full board. And if the full  
7 board approved it, then they could go forward with  
8 it.

9 Q Did that ever happen while you were at the  
10 bank?

11 A Yes.

12 Q Do you recall any specific instances?

13 A It didn't have anything to do with this  
14 loan, the particular loan you're talking about. But,  
15 you know, I don't even recall who the borrower was.  
16 But, you know, it was one that I had turned down.  
17 And they took it to the full board, and it was  
18 approved there.

19 Q But you don't recall it happening with the  
20 loan to Whitewater Development Corporation?

21 A What happened to it?

22 Q No. You don't recall that happening with

1 respect to --

2 A No, it did not happen with that.

3 Q Okay. How did you come to serve on  
4 the -- as the senior lender?

5 A My boss didn't like me. I don't know.  
6 They just divied them up. And Flippin was the  
7 furthest one away from Little Rock. And, you know, I  
8 don't know how they determined who was going to serve  
9 on which one as senior level officer.

10 But there were four affiliates and four  
11 loan officers, and that's the one that I ended up  
12 with, that I was assigned to.

13 Q Okay. Did you have anyone assist you in  
14 the review of the loans that went before you?

15 A No.

16 Q And just so I'm clear, because I'm not that  
17 familiar with the process. In order for a loan to be  
18 approved or to be disapproved, you had to sign off on  
19 it one way or the other; is that correct?

20 A I could approve the loan or condition it,  
21 put a condition on it, you know, if I wanted  
22 additional collateral, or condition it in some way,

1 or disapprove it.

2 MR. PORTNOY: Mrs. Grobmyer?

3 THE WITNESS: Yes.

4 MR. PORTNOY: I'd like to try and clarify  
5 something. Did you see or pass on every loan that  
6 came before the Officer's Loan Committee, or did you  
7 only review those loans that the Officer's Loan  
8 Committee approved?

9 THE WITNESS: I only saw the loans that had  
10 to go to the Director's Loan Committee.

11 MR. PORTNOY: So you didn't see loans that  
12 were below whatever the amount was that required a  
13 loan to be reviewed by the Director's Loan  
14 Committee?

15 THE WITNESS: Correct.

16 MR. PORTNOY: Do you recall what that  
17 amount was?

18 THE WITNESS: I don't recall.

19 BY MR. O'CALLAGHAN:

20 Q You don't recall the level?

21 A No, sir.

22 Q Okay. You stated earlier that you at Twin

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20

1 City Bank you looked at loans that were over \$150,000  
2 above the limit that the loan officers couldn't make  
3 determinations on?

4 A No, I didn't say that.

5 Q I'm sorry, please correct me.

6 A I said that most of the loan officers had  
7 loan authority of 150,000. And if they had loans  
8 that were over their loan amount, loan limits that,  
9 you know, I could approve those up to my loan  
10 authority.

11 Q Okay. Do you recall whether the loan  
12 limit, whether the loan limit at First Ozark was  
13 higher or lower than the one at TCB?

14 A Lower.

15 Q It was lower?

16 A Yes.

17 Q Okay. Can you put a more general -- a more  
18 specific amount than other than -- I know you said  
19 you don't recall specifically.

20 But do you have a general recollection of  
21 what the level was for a loan to come to the Loan  
22 Officer's Committee?



1 A At Flippin?  
2 Q Yes, ma'am.  
3 A I think that their loan limit was 300,000.  
4 And a loan 150,000 above I think would have to go to  
5 the Director's Loan Committee, I think that's  
6 correct.  
7 Q Okay. Was there ever a time when a loan of  
8 a lesser amount would go before the committee?  
9 A Yes.  
10 Q And what would cause that to occur?  
11 A If it was classified or a policy exception.  
12 Q Okay. Could you explain to me what those  
13 two terms mean, first with classified?  
14 A Classified means that it was rated below a  
15 three, which in regulatory terms, you have a four  
16 risk rating, which is a watch loan; a five, which is  
17 a substandard performing loan; and a six, which is a  
18 substandard nonperforming loan, meaning they're not  
19 making their loan payments, interest payments or  
20 anything.  
21 It's a nonaccrual basically. So if any  
22 were classified four, five or six, they would have to

1 come to classified, even if the loan amount were  
2 below the cut off.  
3 Policy exceptions would be if the loan  
4 policy said that the loan value on a real estate was  
5 80 percent, you wanted to do one at 90 percent, you  
6 would have to bring it to the loan committee to get  
7 that approval.  
8 Q And were there other numerous policy  
9 exceptions that might cause a loan to go before the  
10 committee?  
11 A Are there or were there at --  
12 Q Were there at Flippin.  
13 A I don't recall it being numerous, no.  
14 Q With respect to your role as senior lender  
15 at First Ozark, did you have a reporting relationship  
16 with anyone at Twin City with regard to the work you  
17 did at First Ozark?  
18 A Did I report to anyone at Twin City?  
19 Q Yes, ma'am.  
20 A In?  
21 Q With regard to your duty as a senior lender  
22 at First Ozark.

1 A Well, if -- not -- well, I don't really  
2 know how to answer that question. You know,  
3 my -- the executive vice president over commercial  
4 lending, I guess, was like the senior lender of all  
5 of the holding companies. So if I had anything that  
6 came up that I needed some advice on, I would go to  
7 him.

8 Q Who is that?

9 A Bob Birch.

10 MR. BOLAND: Michael, if I could just  
11 interrupt for a second. We have a fax of 15 pages so  
12 far.

13 MR. O'CALLAGHAN: Okay.

14 MR. BOLAND: I guess the last five are  
15 still coming in or last four.

16 MR. O'CALLAGHAN: Okay. Still some more  
17 general questions. So we can continue, and just let  
18 me know when you have all the documents.

19 MR. BOLAND: Okay.

20 BY MR. O'CALLAGHAN:

21 Q You mentioned earlier that if you had a  
22 question or an issue to discuss you would talk to Bob

1 Birch; is that correct?

2 A That's correct.

3 Q Okay. Did you have any other reporting  
4 relationship with anyone at Twin City with regard to  
5 the work you did at First Ozark?

6 A Well, Terry Renaud who was our chairman of  
7 the board, you know, if he -- my, you know, if it  
8 involved a director or something like that, I might,  
9 you know, go to him. But primarily Mr. Birch.

10 Q And did you ever have discussions with  
11 Mr. Penick at Twin City Bank with regard to the work  
12 you did at First Ozark?

13 A I probably did. I forgot about him. In  
14 general, I don't recall anything specifically, you  
15 know, with him. But I'm sure I talked with him on  
16 occasion about it.

17 Q Okay. How about Margaret Davenport?

18 A No.

19 Q Who was Mr. Penick, what position did he  
20 have?

21 A He was president of Twin City Bank.

22 Q Okay. And how about Ms. Davenport?

- 1 A What was her position?  
2 Q Yes, ma'am.  
3 A At what time?  
4 Q During the 1986-1990 time period.  
5 A I think she was senior vice president.  
6 Q Just to make sure I have all the processes  
7 right. You were a senior lender at First Ozark. But  
8 in that capacity, were you formerly a member of the  
9 board there of the loan committee, the Director's  
10 Loan Committee?  
11 A I was a member of the Director's Loan  
12 Committee, yes, at Flippin, not of the board of  
13 directors, though.  
14 Q Okay. With regard to the loan committee  
15 voting process, did that work on a unanimous basis,  
16 or was it a majority rule?  
17 A Unanimous.  
18 Q Is that unanimous for approval?  
19 A Yes.  
20 Q How about for rejection?  
21 A One no vote -- I mean if it's unanimous  
22 approval, one no vote would kill it.
- 

- 1 Q Okay. How about with respect to conditions  
2 on loans?  
3 A Anybody could -- you could put a condition  
4 on a loan, it would not kill it, but the condition  
5 would carry on it. You had to be a member of the  
6 committee to put a condition on it, though.  
7 MR. BOLAND: We have the rest of the  
8 documents now.  
9 MR. O'CALLAGHAN: Great.  
10 BY MR. O'CALLAGHAN:  
11 Q So when you mentioned earlier that loans  
12 would be -- or applications for loans and loan  
13 renewals will be sent to you before the director's  
14 meetings or sometimes after and that if you didn't  
15 approve them, they wouldn't be approved unless they  
16 were overridden by the full board. Was that the case  
17 with all the members of the loan committee?  
18 A As far as I know, yes.  
19 Q So did you have -- did you have specific  
20 authority that other members of the Director's Loan  
21 Committee did not?  
22 A No.

1 Q With regard to your participation in  
2 director's loan committees, did you generally appear  
3 in person, or did you participate by telephone? How  
4 did you generally participate?

5 A For the first couple of years, I 90 percent  
6 of the time I was in person. After that, I probably  
7 attended less and less time in person and started  
8 getting fax copies of the loan apps and would approve  
9 it, get the fax and approve it by telephone after I  
10 reviewed it.

11 Q And could a loan approval go through  
12 without you voting on it?

13 A Yes, it could.

14 Q And how would that work?

15 A They would forget to send it to me or, you  
16 know, whatever. But sometimes, you know, there would  
17 be one that I would see in the minutes that would,  
18 you know, be approved that I wasn't aware of. It  
19 didn't happen a lot. But occasionally, it would fall  
20 through the cracks.

21 Q And if you voted on a loan that you weren't  
22 at the meeting for, would that be reflected in the

1 minutes or would it not be reflected in the minutes?

2 A It would not be reflected in the minutes.  
3 If I approved a loan?

4 Q Yes, ma'am.

5 A No, it would not be reflected in the  
6 minutes.

7 Q Or I guess however you voted, if you  
8 weren't there, would it be reflected?

9 A It would be reflected in the minutes that I  
10 was absent.

11 Q But it wouldn't reflect whether or not how  
12 you voted on a particular issue; is that correct?

13 A No, it would not.

14 Q Are you familiar with the loan that was  
15 made to Whitewater Development Corporation by the  
16 Bank of Flippin?

17 A Generally, yes.

18 Q Okay. If you could just give me, if you  
19 don't mind, what your general recollection is, and  
20 I'll go on to specifics.

21 A Generally that they had a loan on  
22 Whitewater Development with the McDougals and the



1 Clintons, and it was on a, you know, payout basis was  
2 basically the extent of my knowledge on it.

3 Q Okay. When you say a payout basis, what  
4 does that mean?

5 A That they were -- that the development had  
6 been done, and now they were collecting the principal  
7 to retire the debt.

8 Q So as the money came in, they would pay off  
9 the debt?

10 A Yes.

11 Q And when did you first become aware that  
12 the McDougals and the Clintons were involved with the  
13 Whitewater Development Corporation and the loan?

14 A I really don't recall.

15 Q How did the loan first come to your  
16 attention?

17 A Probably through renewal at loan  
18 committee.

19 Q Was this prior to the time you were  
20 vice president for commercial lending?

21 A It would be, you know, during the time that  
22 I was senior lender at the Bank of Flippin, which I

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30

1 would -- I was the vice president at that time.

2 Q So prior to that time, you didn't have any  
3 knowledge of the loan?

4 A No.

5 Q Okay. And when you became senior lender of  
6 the Bank of Flippin, was that the first time you had  
7 done any work in association with that bank?

8 A I may have done some, you know, some loan  
9 reviews when we were getting ready to  
10 purchase -- when we were looking at purchasing the  
11 building, I may have gone up and looked at their loan  
12 portfolio. I really don't recall. But that was the  
13 first time that I was actively, you know, involved  
14 with their loans and credit decision.

15 Q So that was just a general review of their  
16 entire loan portfolio when there was an acquisition  
17 being considered?

18 A There was a due diligence. You didn't see  
19 all the loans, you know.

20 Q Was governor -- was Mr. Clinton governor at  
21 the time that you first became aware of the loan?

22 A Yes, he was.

1 Q Do you recall how it came to your attention  
2 that the Bill Clinton involved in the loan was  
3 governor, or was that just something you knew from  
4 looking at the documents?

5 A You just knew that from -- I mean that was  
6 part of the presentation, when you do a loan to a  
7 corporation, you know who the principals are. And,  
8 you know, he was governor and, you know, you would  
9 remember a loan that the governor had, or I would.  
10 Just because -- I mean it would just kind of stand  
11 out in your mind a little bit.

12 Q And did you know who Jim McDougal was at  
13 the time?

14 A Yes.

15 Q And what was your knowledge of who Jim  
16 McDougal?

17 A Just he had an interest in Madison Savings  
18 & Loan.

19 Q And were you familiar with Madison at the  
20 time?

21 A Yes.

22 Q How were you familiar with it?

1 A It's located in Little Rock, and I'm in  
2 Little Rock.

3 Q Had you been aware of any problems that  
4 Madison had been experiencing at that time?

5 A No.

6 Q Do you recall who the guarantors on the  
7 loan were?

8 A Not off the top of my head, no.

9 Q Do you recall whether -- all right. I'd  
10 like to direct your attention to a document -- I'm  
11 hoping -- it should be the seventh page on the  
12 documents that were faxed to you. And the top of it  
13 reads, "commercial loan application." It's dated --

14 A Okay.

15 Q It's dated January 8th, 1987.

16 A Yes.

17 Q Loan officer identified is Ron Proctor.

18 A Okay.

19 Q Then on the right-hand side of it in the  
20 right-hand column, the second item down reads  
21 "guarantee."

22 A Yes.

- 1 Q And it reads James B. McDougal, Susan H.  
2 McDougal, Bill Clinton and Hilary Rodham Clinton. Do  
3 you see that?  
4 A Okay.  
5 Q I'm sorry. Do you see that?  
6 A Yes, I do.  
7 Q Does that refresh your recollection as to  
8 who the guarantors were on the loan?  
9 A Well, this says individual comakers instead  
10 of guarantors.  
11 Q What does that mean?  
12 A It's some -- it means that they comade the  
13 loan rather than signed as a guarantor. They were  
14 comakers. I mean I assume that's what it means,  
15 that's what it says here.  
16 Q Okay. So those were the four people who  
17 were -- who held the loan?  
18 A Yes.  
19 Q Who were responsible for it?  
20 A Right.  
21 Q Do you recall whether -- who in that group  
22 was -- whether one individual was considered to be

- 1 less of a credit risk than the others?  
2 A No.  
3 Q Do you recall whether one had a higher net  
4 worth than the other?  
5 A No.  
6 MR. PORTNOY: Can we go off the record for  
7 one second, please?  
8 MR. O'CALLAGHAN: Yes.  
9 (Discussion off the record.)  
10 BY MR. O'CALLAGHAN:  
11 Q I'd asked you earlier if you were aware of  
12 the loan to Whitewater Development Corporation. You  
13 said that you were. Then you say it came to your  
14 attention as senior lender at First Ozark.  
15 A Through the renewal process, yes.  
16 Q Okay. Did you review the loan at any time?  
17 A Other than just seeing it at loan  
18 committee? A loan like what I'm looking at right  
19 now? I mean this is what would be presented to loan  
20 committee would be this commercial loan application.  
21 Q Okay. And you would have seen that; is  
22 that right?

1 A I would have seen the commercial loan  
2 application, yes.

3 Q Okay. Would you have reviewed any other  
4 documentation in connection with the loan?

5 A Not necessarily.

6 Q Okay. Do you know who Ron Proctor is?

7 A Yes, I do.

8 Q And did you know him at the time that we're  
9 discussing, let's say 1986 through 1988?

10 A Somewhere in there, yes, I knew who he was.

11 Q And who was he?

12 A He was a lender at the bank in Flippin.

13 Q Did you have dealings with him at the time?

14 A Yes, I did.

15 Q What was the nature of your -- of the  
16 relationship that you had with Ron Proctor?

17 A Just through approving loans that he may be  
18 presenting that had to go to the Director's Loan  
19 Committee.

20 Q Okay. And do you recall whether he was the  
21 person who presented the loan with the Whitewater  
22 Development Corporation?

1 A I don't recall that, no.

2 Q And again looking at the document that I  
3 just showed you, the commercial loan application  
4 dated January 8th, 1987 reads loan officer, Ron  
5 Proctor.

6 A Right.

7 Q Would that indicate he was the person who  
8 presented it?

9 A Yes.

10 Q Just to clarify something. Again, looking  
11 at the commercial loan application that I just  
12 referred you to --

13 A Yes.

14 Q -- its applicant Whitewater Development,  
15 Inc. and principals of Whitewater Development, Inc.  
16 by James McDougal, President, by Susan H. McDougal,  
17 Secretary. It reads loan amount 53,161.52. And the  
18 rate is 10.5 percent.

19 A Yes.

20 Q Do you recall whether this was the level of  
21 a loan that would have been reviewed by the  
22 committee?



1 A I don't recall. The only thing I see is  
2 down at the bottom where it says approved by the  
3 Officer's Loan Committee. I don't recall it -- I  
4 don't recall.

5 Q Okay. Do you recall whether -- any policy  
6 exceptions were connected with the loan or the  
7 renewal?

8 A I don't recall there being any policy  
9 exceptions on it.

10 Q So do you have any recollection as to why  
11 this loan came before the committee?

12 A To the Officer's Loan Committee?

13 Q To the officer's and/or director's, both.

14 A No, I don't.

15 MR. PORTNOY: I apologize for  
16 interrupting.

17 Mrs. Grobmyer, it's still not clear to me,  
18 do you actually recall whether this loan renewal came  
19 to the Director's Loan Committee?

20 THE WITNESS: No, I don't.

21 MR. PORTNOY: You just recall that at some  
22 point you saw a loan renewal or something related to

1 this loan in connection with your duties on the  
2 Director's Loan Committee?

3 THE WITNESS: I just heard the name  
4 Whitewater up there. I knew there was a loan called  
5 Whitewater that the Governor of Arkansas was involved  
6 in.

7 And with him being the Governor of Arkansas  
8 and having a loan, I mean, you would remember -- I  
9 mean I would, you know, something like that. So I  
10 don't recall that ever going to loan committee or  
11 Officer's Loan Committee or Director's Loan  
12 Committee. I just -- I'm aware of them having the  
13 loan.

14 BY MR. O'CALLAGHAN:

15 Q Okay. And I'd like to reference you -- or  
16 refer you to another document. It's actually the  
17 document immediately following the one we just  
18 reviewed. And it's First National -- First Ozark  
19 National Bank Officer's Loan Committee minutes.

20 A Yes.

21 Q And it's hard to read the date on the first  
22 page, but I believe it's January 8, 1987.

1 A Okay.

2 Q And if you look at the second page, the  
3 date's clear, it reads January 8, 1987, as do the  
4 pages that follow it. And this is a document that  
5 was produced to us. It appears to be minutes from an  
6 Officer's Loan Committee meeting at First Ozark  
7 National Bank.

8 A Okay.

9 Q And then it reads members present, and it  
10 reads that Ron Proctor, chairman, Wes Strange, Twyla  
11 Hudson, Vernon Dewey, Barbara Carson and Wanda  
12 Felty.

13 A Yes.

14 Q And I would like to direct your attention  
15 to the second page of the document. And the third  
16 item down, I believe reads name Whitewater  
17 Development Company, Inc. then in parentheses, it  
18 says Proctor.

19 A Right.

20 Q It says commercial, then it says purpose of  
21 loan, renew loan number 5885, originally for purpose  
22 and development of subdivision, amount of loan

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1 53,161.52, a rate of 10.5 percent. And then with  
2 regard to -- it lists a number of conditions attached  
3 to it, it says, all proceeds less commissions applied  
4 to note, all contracts to be maintained here at FONB,  
5 and, three, need new financials.

6 And then repayment source, escrow proceeds  
7 guarantors collateral, risk rating 3. And then it  
8 reads approved.

9 A Yes.

10 Q After showing you this document, does this  
11 help refresh your recollection whether this loan ever  
12 became the -- came before the Officer's Loan  
13 Committee at First Ozark National Bank?

14 A It came before the Officer's Loan  
15 Committee.

16 Q So do you recall that happening?

17 A No.

18 Q Okay. Do you recall being told that that  
19 happened?

20 A I don't recall being told that it happened,  
21 no.

22 Q Okay. There are listed three conditions

1 for this loan. Are those the type of conditions that  
2 would have caused a loan of this size to go before  
3 the committee, the Officer's Loan Committee?

4 A Not necessarily.

5 Q But would a loan of this size have gone  
6 before the Officer's Loan Committee otherwise?

7 A I don't recall what size went. I  
8 would -- I don't recall.

9 Q Okay. Do you recall conditions of this  
10 nature being attached to the Whitewater loan?

11 A Do I recall these conditions being attached  
12 to this loan?

13 Q Yes, ma'am.

14 A No.

15 Q Were you ever involved in discussions where  
16 the renewal request for the Whitewater loan took  
17 place?

18 A Yes.

19 Q Could you describe the conversations or  
20 discussions that you participated in?

21 A The only thing that I recall about the  
22 conversations on Whitewater was the difficulty in

1 getting financial statements.

2 Q Okay. And when did those discussions take  
3 place?

4 A I don't recall.

5 Q Was it before the loan was renewed or  
6 afterwards?

7 A All the above.

8 Q Before, during and after?

9 A Right.

10 Q Okay. And was this during the time that  
11 you were vice president for commercial lending?

12 A Yes.

13 Q Who did you have these discussions with?

14 A It was brought up in Director's Loan  
15 Committee. We went over exceptions, and one of the  
16 exceptions was financial statements, and the  
17 discussion would be what steps were being taken to  
18 try and get the financial statements.

19 Q Had there been a request to have a waiver  
20 of the financial statements before the Director's  
21 Loan Committee that you participated in?

22 A No, there would not be. That would not go

1 before the Director's Loan Committee.

2 Q I would like to have you take a look at a  
3 document. It's a number of pages passed the document  
4 we just looked at, it's a First Ozark National Bank  
5 Director's Loan Committee Minutes, December 7th,  
6 1987. It may be the last document in your package.

7 A Okay.

8 Q Do you have that in front of you?

9 A Okay.

10 Q What I'm referring to is the First Ozark  
11 National Bank Director's Loan Committee Minutes,  
12 December 7th, 1987.

13 A Yes.

14 Q Reads members present were Lyle Wood  
15 Chairman, Guy Alexander, Kern Powers, Wes Strange,  
16 Susan Sisk, also present were Ron Proctor and Vernon  
17 Dewey.

18 A Yes.

19 Q My first question is, have you seen this  
20 document before?

21 A No -- well, yes, I have. But it would have  
22 been in '87. I've not seen it recently.

1 Q And looking at this document, does this  
2 refresh your recollection as to whether this was the  
3 meeting you attended where the difficulty with  
4 getting financials in connection with the Whitewater  
5 Development Corporation loan was discussed?

6 A It may have been. Looking at this,  
7 obviously it was discussed.

8 Q Okay. And do you recall whether there were  
9 ongoing discussions during this meeting with regard  
10 to difficulties in getting financial statements from  
11 the Clintons?

12 A I don't recall. At this meeting if there  
13 were difficulties?

14 Q Yes, ma'am.

15 A I don't recall.

16 Q Okay. Do you recall conversations prior to  
17 this meeting with difficulties in getting financial  
18 statements from the Clintons?

19 A I don't recall at what meeting it was, but  
20 there was difficulty in getting financial statements  
21 from the Clintons. And I don't know if it was this  
22 meeting, before this meeting or after this meeting.



1 But there was discussions about difficulty of getting  
2 financial statements from the Clintons.

3 Q Okay. And were financial statements  
4 something that was required in order for a loan to be  
5 reviewed?

6 A Generally you want to get current financial  
7 statements.

8 Q And why is that?

9 A To see the repayment source of your  
10 guarantor if the project does not succeed the way it  
11 is planned.

12 Q Okay. And if I could have you pull out --  
13 and at the same time I'll probably refer back and  
14 forth to two documents -- the December 7th, '87  
15 Director's Loan Committee meetings when we were just  
16 referring to. If you could pull out the January 8th,  
17 1987 Officer's Loan Committee minutes. We'll go to  
18 the second page of that.

19 A Okay.

20 Q On the second page of that, as I stated  
21 earlier, the conditions attached to the renewal of  
22 the Whitewater Development Company loan, the third

1 condition listed there reads, need new financials.

2 A Yes.

3 Q That's dated January 8, '87. Do you recall  
4 discussions going on in or around January 1987 with  
5 regard to difficulties in getting financial  
6 statements in relation to this loan?

7 A I don't recall specifically that date, you  
8 know, discussions. I'm sure there were.

9 Q Okay. Do you recall who you had  
10 discussions with?

11 A It would have been with Ron Proctor or Wes  
12 Strange.

13 MR. PORTNOY: Can I ask whether you're  
14 saying that you recall conversations with Mr. Proctor  
15 and Mr. Strange or whether you're just surmising that  
16 you had conversations with them?

17 THE WITNESS: They were in attendance in  
18 the loan committee minutes where financial statements  
19 were discussed. So if they were discussed, it was in  
20 a loan committee setting, Director's Loan Committee  
21 setting about, you know, trying to get the financial  
22 statements.

1 MR. PORTNOY: That's referring back to the  
2 December 1987 meetings?

3 THE WITNESS: I don't know -- what I said  
4 earlier, I don't know if it was prior to December or  
5 after December. I just recall that there was  
6 discussion about the financial statements. I don't  
7 recall the dates.

8 BY MR. O'CALLAGHAN:

9 Q Okay. This might help if we look at the  
10 December 7, '87 loan committee minutes.

11 A Okay. I've looked at them, and I  
12 understand what it's saying. But I don't  
13 specifically recall the conversation at that time.  
14 I'm sure there was discussion about it, because it's  
15 noted in here. But I don't recall, you know, 10  
16 years ago what was discussed.

17 Q Okay. And this might help. I hope you  
18 understand that I'll keep referring you to things to  
19 help refresh your recollection. It may or may not  
20 work.

21 A Okay.

22 Q And I understand this was a fair amount of

1 time ago. In the last paragraph, the December '87  
2 minutes, the third sentence in that paragraph reads,  
3 "the committee also agreed to waive the requirement  
4 of financial statements on the McDougals Whitewater  
5 Development based upon", it says, "payments on loan  
6 are derived from escrow contracts controlled by FOMB,  
7 collateral sufficient to cover the loan and, 3, the  
8 loan is guaranteed by Bill Clinton."

9 It appears in this meeting there was -- the  
10 director's voted to waive the financials. Do you  
11 recall the meeting where the financials were waived?

12 A No, I don't recall.

13 Q Okay. Do you recall that prior to the  
14 meeting where the financials were waived whether  
15 there were meetings where there were discussions  
16 about difficulties in getting financials with respect  
17 to this loan?

18 A I don't recall any specific meeting. I  
19 just recall in general. I don't know when it was.

20 Q Just general discussions is fine.

21 A Yes. If this is December of '87, that's  
22 when it was. I just don't recall specifically the

1 dates.

2 Q Okay. Do you recall which financials the  
3 bank had difficulty in acquiring, whether the  
4 McDougals or Clintons?

5 A I don't recall.

6 Q Do you recall how long the bank had  
7 difficulty in acquiring the financial statements that  
8 they were looking for?

9 A I don't.

10 Q Do you know if it was a month, a week, or  
11 could you put it in some kind of time frame?

12 A Can I put what in kind of a time frame?

13 Q How long the bank was looking to get  
14 financial statements that weren't in the loan  
15 portfolio.

16 A No idea.

17 Q Did you have any discussions with anyone at  
18 Twin City Bank about the lack of financial statements  
19 in the Whitewater loan?

20 A Not that I recall.

21 Q Did you vote on whether or not to renew the  
22 Whitewater loan?

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1 A I don't remember. I don't remember that.

2 Q Do you recall ever approving a renewal on  
3 that loan?

4 A I don't recall that, approving. I don't  
5 remember.

6 Q Were you ever aware of shortfalls in  
7 payments of principal and interest related to the  
8 Whitewater loan?

9 A No.

10 Q Have you since learned that there were  
11 shortfalls in payments of interest or principal with  
12 respect to the Whitewater loan?

13 A I'm sorry, I didn't hear the first part of  
14 your question.

15 Q It's a similar question. But it refers to  
16 whether you have since learned that there was  
17 shortfalls in payments of principal and interest with  
18 regard to the Whitewater loan.

19 A No.

20 Q Do you recall in 1986 reading in the  
21 Democrat Gazette that Madison Guaranty was  
22 experiencing financial difficulties?

1 A No.

2 Q Or management problems?

3 A No.

4 Q Did you read in the Democrat Gazette at  
5 that time?

6 A I don't remember.

7 Q I mean just as a general matter, did you  
8 read the paper?

9 A Well, at that time there were two separate  
10 papers, so I don't know -- I don't recall which one I  
11 had or got.

12 Q Okay. Would the absence of a financial  
13 statement cause concern with regard to whether or not  
14 a loan should be renewed?

15 A No.

16 Q Why is that?

17 A Because once a borrower gets the money,  
18 sometimes they are not very prompt about giving you  
19 financial statements, and that's just, you know,  
20 the -- part of banking.

21 I mean you're always trying to get  
22 financial statements for people, and sometimes they

1 will give them to you and sometimes they won't. And,  
2 you know, there's not much you can do once they have  
3 the money.

4 Q But generally is a loan file considered  
5 complete without financial statements in it?

6 A It would show an exception if the financial  
7 statements weren't in it and had not been waived for  
8 some reason.

9 Q Okay. Just generally, why do banks ask for  
10 financial statements when extending credit to  
11 closely-held corporations?

12 A Ask for financial statements on the  
13 guarantors or on the company or who?

14 Q The guarantors.

15 A Well, that's normally your second source of  
16 repayment is your guarantor. On a closely-held  
17 corporation, your guarantor or your comaker is the  
18 corporation, so you're looking at him for another  
19 source of repayment and liquidity if the project does  
20 not go as planned.

21 Q And at that time did the bank have any  
22 information with regard to whether or not any of



1 the -- whether the development was experiencing any  
2 financial difficulties?

3 A I don't know.

4 Q Would shortfalls in the loans -- in loan  
5 payments or payments in principal in interest have  
6 been something that would be considered by the  
7 committee?

8 A I don't recall.

9 Q Just as a general matter, is that one of  
10 the issues that would be discussed if that had  
11 occurred?

12 A In general banking, if a loan goes to loan  
13 committee, you're wanting to know what your repayment  
14 schedule is and how you're going to get repaid. So  
15 as a banking practice, that's something you would  
16 look at.

17 Q Just so I'm clear. Generally you look at  
18 shortfalls, you'd also look at -- you want to see the  
19 financial statements of the guarantors. Is that  
20 true?

21 A I don't understand what you're asking me.

22 Q I'm just asking you generally. I'm trying

1 to find out about the process whether shortfalls in  
2 payments is something that would be considered in  
3 deciding whether or not to renew a loan, and also  
4 whether review of financial statements would also be  
5 part of the decisionmaking process in deciding  
6 whether to renew a loan.

7 A Well, generally if I'm looking to renew a  
8 loan, I'm looking at the past performance of the loan  
9 and, you know, hopefully having current financial  
10 information to review.

11 Q Okay. And a shortfall, would that trigger  
12 a keener interest in seeing current financial  
13 statements?

14 A Yes, uh-huh.

15 Q Okay. And would that also perhaps spur a  
16 collateral appraisal of the venture or business of  
17 receiving a loan?

18 A It may or may not, just depending on how  
19 familiar you are with the project and prices of real  
20 estate and the area the project's in.

21 Q Okay. Do you recall whether First Ozark  
22 conducted collateral appraisal of the Whitewater

1 Development in or around January 1987 or in that time  
2 period?

3 A No.

4 Q Okay. The first document I showed you or I  
5 provided you with is a two-page document, and it  
6 reads, "file notes Whitewater Development, Inc.  
7 loan" --

8 A Yes.

9 Q -- "Loan Number 5885."

10 A Yes.

11 Q It's got an '87 in the upper right-hand  
12 corner, it's dated January 6th, 1987, it says Ron  
13 Proctor. And then the first sentence reads, "in  
14 midDecember 1986, I inspected the real estate  
15 securing the loan to Whitewater Development, Inc. and  
16 the current principal amount of 53,161.52."

17 Then it goes on to read, "as a final  
18 analysis, it will show several lots are sold,  
19 however, very few have improvements. I noticed two  
20 or three medium-priced homes and about the same  
21 number of mobile homes which were in bad repair,  
22 trash and junk surrounding these mobile homes. This

1 will occur to future sales of the remaining unsold  
2 lots."

3 Do you recall whether this document was  
4 ever -- whether you ever saw this document?

5 A No.

6 Q Were you ever told about it?

7 A Not that I recall.

8 Q Is this something that was a general  
9 practice of the bank to do collateral appraisals of  
10 property owned by ventures that it would lend money  
11 to?

12 A Is it -- would you ask that again?

13 Q Well, I guess the better question is, what  
14 would cause Mr. Proctor to do a collateral review of  
15 this nature?

16 A I don't know.

17 Q Was this a normal practice?

18 A I don't know.

19 Q Okay. I'd like to direct your attention  
20 to -- it should be the fourth page in the documents I  
21 provided you. It's a letter dated November 14th,  
22 1986.

1 A Okay.

2 Q It appears to be from Mr. James B.  
3 McDougal, and it's addressed to Mr. and Mrs. Bill  
4 Clinton with a Mr. crossed out, with the governor  
5 written in handwriting on top. It says, "Dear Bill  
6 and Hilary," and it's dated November 14th, 1986, it  
7 reads, "this is a status report on Whitewater  
8 Development Corporation. The company today is  
9 experience loses totaling approximately 90,000."

10 Were you aware that in or around November  
11 of '86 or at any time that the company experienced  
12 losses at approximately \$90,000?

13 A No, I'm not.

14 Q Okay. Then in the third paragraph, it  
15 reads, "our dealings with the bank have been most" --  
16 "have been made most difficult with five changes in  
17 management during the life of this loan. The bank  
18 has consistently failed to keep us informed of the  
19 status of the escrows in the loan."

20 And it reads, "apparently, three of the  
21 purchasers of the more expensive tracts have  
22 defaulted."

1 Were you aware that three purchasers of the  
2 more expensive tracts of the Whitewater Development  
3 Corporation had defaulted on their payments?

4 A No.

5 Q Was that ever discussed in any of the board  
6 meetings that you know of?

7 A Not that I recall.

8 Q This document is dated November 14th,  
9 1986. It appears to indicate that in the second  
10 paragraph as of last summer, we had succeeded in  
11 selling all of the property.

12 With that in mind, with that having  
13 occurred by November 14th, 1986, would that affect  
14 the -- would that have affected their ability to --  
15 rather called into question their ability to pay the  
16 loan off as sales money came in?

17 A I'm sorry, I don't understand what you're  
18 asking me.

19 Q Well, if, in fact, all the property at  
20 Whitewater had been sold off by November 14th,  
21 1986 -- I'll withdraw the question.

22 Would a renewal request of the loan have

1 triggered a collateral inspection of the type done by  
2 Mr. Proctor?

3 A I don't know.

4 Q Okay. Turning your attention again -- I'm  
5 sorry I'm bouncing from document to document, usually  
6 I can just hand them to you -- to the board minutes  
7 from December 7th, 1987.

8 A Okay.

9 Q And again directing your attention to the  
10 portion that reads, "the committee also agrees to  
11 waive the requirements of financial statements on the  
12 McDougals Whitewater Development based upon payments  
13 on loan or derived from escrow contracts controlled  
14 by FONB, collateral sufficient to cover loan, and  
15 loan is guaranteed by Bill Clinton."

16 Do you recall the discussions that  
17 surrounded the committee decision to waive the  
18 requirement of financial statements?

19 A No, sir, I don't.

20 Q The third item there says the loan is  
21 guaranteed by Bill Clinton.

22 Do you recall what affect that had with

1 regard to the agreement to waive the requirement of  
2 financial statements?

3 A No, I don't.

4 Q Do you know what that refers to, like what  
5 type of guarantee was offered up by Bill Clinton?

6 A No, sir, I don't.

7 Q With regard to the loan renewal or any of  
8 the loans for Whitewater Development Corporation, did  
9 you have any discussions with anyone at Twin City  
10 about that loan or that loan renewal?

11 A Not that I recall.

12 Q Did you have any discussions with the  
13 Clintons with regard to the loan or the loan renewal  
14 for Whitewater?

15 A I did not.

16 Q And how about the McDougals? I'm sorry,  
17 was that a no? Sorry, we couldn't hear you.

18 A No, I didn't. I'm sorry. No, I did not  
19 talk to the McDougals either.

20 Q Did you talk to Chris Wade about it?

21 A No.

22 Q Do you know who he is?



1 A I know the name. I don't recall ever  
2 meeting him in person, but I heard the name before.

3 Q Directing your attention again to the board  
4 minutes from January 8th, 1987.

5 A Okay.

6 Q I have to get there myself. And again the  
7 second page, and just for clarity, that's the  
8 Officer's Loan Committee meeting, it's not the board  
9 minutes.

10 And with regard to the conditions where it  
11 says need new financials. You said you're aware of  
12 at a certain point that the bank was trying to get  
13 new financial statements; is that correct?

14 A That's correct.

15 Q Okay. Was someone at the bank asked to get  
16 new financial statements from the Clintons at any  
17 time?

18 A Was someone from what bank?

19 Q Either from Twin City Bank or from First  
20 Ozark.

21 A I don't know about Twin Cities Bank. First  
22 Ozark was trying to get the financial statements.

1 Q Who at the bank was trying to get it?

2 A Ron Proctor would be the account officer on  
3 it. So I would think he would be trying to get it.  
4 But I don't know. I don't know for sure who was.

5 Q Do you know if in connection with the  
6 Whitewater Development Corporation loan, prior to the  
7 waiver that is referenced in the December '87 board  
8 minutes, whether prior to that, the Clintons or  
9 McDougals were told that they didn't need to supply  
10 financial statements for their loan file?

11 A I don't know.

12 Q Okay. I'd like to direct your attention  
13 now to a document which has a B181 on the top. It  
14 says request for loan documentation waiver.

15 A Okay.

16 Q It's to credit department from Ron Proctor  
17 dated July 15th, 1988. It's regarding documentation  
18 requirement, borrower name is Whitewater Development  
19 Company, Inc., Note Number is R5885. Document is  
20 personal financial statements of guarantor and  
21 financial statement of Whitewater.

22 A Yes.

1 Q The reason for request, payments of loan  
2 are derived from escrow contracts controlled by FONB  
3 and collateral sufficient to cover the loan.

4 Have you ever seen this document before?

5 A Not that I recall.

6 Q Are you familiar with the request for a  
7 waiver that was put in July 15th, 1988?

8 A No, I'm not.

9 Q Are you familiar with legislation, Arkansas  
10 state legislation that was enacted in July of 1987  
11 that affected the ability of state banks to open  
12 branches in other parts of the county which they  
13 operated?

14 A I'm familiar with that, yes.

15 Q Okay. I think it's Act 539 is the number  
16 on it. I didn't do a very good job of summarizing  
17 what the act stood for.

18 A I know what you're talking about.

19 Q And what's your understanding of the act  
20 and what it accomplished?

21 A It enabled -- from my point of view, it  
22 enabled banks to branch within 5 miles of their home

1 office, which they had -- well, that's what the old  
2 rule was, and this enabled them to branch in excess  
3 of that in county instead of 5 miles within their  
4 home office.

5 So all of Pulaski County was now open for  
6 our bank to do branching, where before it was just 5  
7 miles within the radius of your home office, in your  
8 own city.

9 Q Okay. Was Twin City Bank, did they have  
10 particular interest in this legislation while it was  
11 pending?

12 A I think all banks had interest in it.

13 Q Okay. But did this legislation as far as  
14 you know specifically benefit banks in Pulaski  
15 County?

16 A No, not specifically. I think it  
17 benefitted all banks in the state.

18 Q Well, I know you're not a lawyer, so I'm  
19 not going to go through the specifics of the  
20 legislation with you.

21 But I wanted to ask you about is whether  
22 there was anyone at Twin Cities Bank that lobbied on

1   behalf of the bank to help the law's passage?

2       A    I don't know.

3       Q    Did the bank have a person who did lobbying  
4   in general?

5       A    I don't know.

6       Q    So is it your understanding that this  
7   legislation allowed Twin City Bank to expand into  
8   other markets that it previously hadn't been able to  
9   enter?

10      A    Yes.

11      Q    Did anyone at Twin City Bank have any  
12   communications with the Governor's office with regard  
13   to this legislation?

14      A    I don't know.

15      Q    Did you have contact with any anyone at the  
16   Governor's office with regard to this legislation?

17      A    No, I did not.

18      Q    Was this legislation ever discussed at  
19   board or loan committee meetings?

20      A    Not that I recall.

21      Q    Do you recall having discussions with  
22   people at the bank about it?

1       A    What bank? Which bank?

2       Q    Twin City Bank, I'm sorry.

3       A    No, not specifically, no.

4       MR. O'CALLAGHAN: Okay. I'm going to take  
5   a moment to review my notes, and I should be  
6   finishing up soon. Then Mr. Portnoy may have some  
7   questions for you.

8       THE WITNESS: Okay. Thanks.

9       (Pause.)

10      BY MR. O'CALLAGHAN:

11      Q    You mentioned earlier that you were aware  
12   of discussion that involved the Whitewater  
13   Development Corporation loan.

14      Are you aware of any discussions that  
15   occurred that centered around problems associated  
16   with the loan?

17      A    Other than getting financial statements,  
18   no.

19      Q    Are you aware of whether this -- or have  
20   you learned whether this loan was ever given any  
21   preferential treatment?

22      A    I don't -- I don't know. I mean I -- I

1 don't know.

2 Q Have you ever learned or heard that this  
3 loan was treated differently than other loans held by  
4 the bank?

5 A No.

6 Q Are you aware if anyone from Twin City Bank  
7 took an active interest in this loan?

8 A No.

9 Q Do you know, have you ever heard whether  
10 the governor or anyone from his office requested  
11 preferential treatment with regard to this loan?

12 A No.

13 Q Have you ever heard or learned that the  
14 Governor's office worked for the passage of Act 539  
15 to benefit Twin City Bank?

16 A No.

17 MR. O'CALLAGHAN: Okay. I have no further  
18 questions at this time.

19 EXAMINATION

20 BY MR. PORTNOY:

21 Q Mrs. Grobmyer, this is Jim Portnoy. I have  
22 just one question to follow-up on Mr. O'Callaghan's.

1 Mr. O'Callaghan asked you whether you had  
2 ever heard that Act 539 was somehow designed to  
3 benefit Twin City Bank.

4 The allegation has been made that Governor  
5 Clinton supported Act 539 in return for some kind of  
6 special treatment with respect to the Whitewater loan  
7 at First Ozark.

8 Do you have any reason whatsoever to  
9 believe that allegation is true?

10 A None whatsoever.

11 Q Would it be fair to say that to the best of  
12 your knowledge it's untrue?

13 A It would be fair to say.

14 MR. PORTNOY: Thank you, ma'am, that's all  
15 I have.

16 MR. O'CALLAGHAN: Okay, thank you very  
17 much. Off the record.

18 (Whereupon, at 6:48 p.m., the deposition  
19 was concluded.)

20

21

22

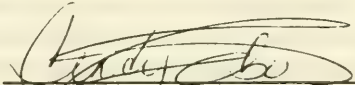
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SUSAN SISK GROBMYER



CERTIFICATE OF NOTARY PUBLIC & REPORTER

69

I, CINDY L. SEBO, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires FEBRUARY 14, 2000

DEPONENT

## ERRATA

[illegible]



**DEPOSITION OF PAUL C. BERRY  
IN RE: S. RES. 120**

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**FRIDAY, MAY 10, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of PAUL C. BERRY, called for examination pursuant to notice of deposition, at 9:40 a.m. in Room 640-A of the Hart Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, Esq.  
Majority Associate Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
NEAL E. KRAVITZ, Esq.  
Minority Principal Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.



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## P R O C E E D I N G S

1 MR. BARTOLOMUCCI: Good morning,  
2 Mr. Berry. Before we begin the questioning, there is  
3 some preliminary information I would like to impart  
4 to you. This is a deposition conducted pursuant to  
5 Senate Resolution 120 which establishes a Special  
6 Committee to conduct an investigation of Whitewater  
7 Development Corporation and certain related matters.  
8 These depositions are held in advance of public  
9 hearings, and you may or may not be called to testify  
10 at such hearings.

11 I will be putting the questions to you  
12 under oath. If you don't understand the question,  
13 let me know and I will rephrase it, and tell me at  
14 any point if you want to take a break.

15 Our court reporter will prepare a  
16 transcript of the deposition, which will be treated  
17 as confidential, and if in the event that you are  
18 called to testify at public hearings, you will be  
19 supplied with a copy of the deposition, and in any  
20 event, you will have an opportunity to review the  
21 deposition to make necessary corrections.

---

4

1 MR. BERRY: How soon would that be,  
2 approximately?

3 MR. BARTOLOMUCCI: To be honest, I am not  
4 sure. I haven't handled that end of things.

5 MR. BERRY: Okay.

6 MR. BARTOLOMUCCI: But I will be happy to  
7 look into it and get back to you.

8 MR. BERRY: All right.

9 MR. BARTOLOMUCCI: I know our typical  
10 policy is to supply a copy of the deposition four  
11 days in advance of any public hearings, if we can do  
12 that. Sometimes the times of the hearings relative  
13 to the depositions don't allow it, but we normally  
14 shoot for four days.

15 MR. BERRY: All right.

16 MR. BARTOLOMUCCI: But if I could contact  
17 you at the same number, I will let you know about our  
18 procedure for reviewing the transcript.

19 MR. BERRY: Okay.

20 MR. BARTOLOMUCCI: I think you told me  
21 before we began you are not represented by counsel  
22 today.

1 MR. BERRY: No, I am not.

2 MR. BARTOLOMUCCI: But you understood you  
3 could have been if you wanted to?

4 MR. BERRY: Yes.

5 MR. BARTOLOMUCCI: Just so you know, we  
6 note for the record objections to the forms of  
7 questions. And we also entertain objections on the  
8 grounds of privilege or scope. The chairman of the  
9 committee, however, has the right to rule on any  
10 objections.

11 MR. BERRY: All right.

12 MR. BARTOLOMUCCI: At this time, I will ask  
13 the court reporter to swear you in.  
14 Whereupon,

15 PAUL C. BERRY  
16 was called as a witness and, having first been duly  
17 sworn, was examined and testified as follows:

18 EXAMINATION

19 BY MR. BARTOLOMUCCI:

20 Q Would you please state your full name for  
21 our record.

22 A Paul C. Berry, B-e-r-r-y.

1

2

3 Q And what is your present business address?

4 A My present business address is Berry &  
5 Associates, 300 West Capital Avenue, Little Rock,  
6 Arkansas 72201.

7 Q If you would, Mr. Berry --

8 A I also have an office.

9 Q I'm sorry?

10 A I am also employed at Global USA, a  
11 government relations firm located at 2121 K Street,  
12 Northwest, in Washington. And I don't recall the zip  
13 code.

14 Q If you would, Mr. Berry, could you give us  
15 just a thumbnail sketch of your educational  
16 background?

17 A I have a bachelor of arts degree from the  
18 University of Arkansas. I am also a graduate of the  
19 intermediate and banking schools of Arkansas and the  
20 Stonier Graduate School of Banking, in association at  
21 this time with Rutgers University.

22 Q Now, you are currently working for both

1 Berry & Associates and Global USA?

2 A Yes, my principal employment is Berry &  
3 Associates.

4 Q What sort of enterprise are those two  
5 companies?

6 A Both do government relations and lobbying  
7 and full range of government relations, and I also do  
8 business development, for -- in marketing for clients  
9 from the -- from -- out of Berry & Associates.

10 Q So what would your title be at these two  
11 companies?

12 A I am the managing partner in Berry &  
13 Associates, which is a general partnership that my  
14 wife and I have. And the -- my title at Global is  
15 vice president.

16 Q It is safe to say both of these outfits  
17 engage in what we would commonly call lobbying?

18 A Yes.

19 Q Does that include lobbying at the federal  
20 level?

21 A Yes, it does. And I'm registered under the  
22 Global USA registration with the appropriate federal

1 entities.

2 Q Now, you are a very close friend of the  
3 President; is that fair?

4 A I am a friend of President's.

5 Q You lived with him in the '70s during the  
6 time he was teaching at the University of Arkansas?

7 A No. I lived -- he stayed in my apartment.  
8 We roomed together in Little Rock, January through  
9 May of 1976.

10 Q What were you doing at that time?

11 A I was a vice president of Union National  
12 Bank at that point. I later became a senior vice  
13 president of Union National Bank, but I was not at --  
14 during those months.

15 Q And was I correct that Bill Clinton was  
16 teaching law at that point?

17 A No. He had taken a leave of absence from  
18 the University of Arkansas School of Law at  
19 Fayetteville and was a candidate for Attorney General  
20 of the state of Arkansas that year.

21 Q Okay, so he was running for --

22 A He was running for AG.



1 Q -- for office; okay.

2 Can you give us the dates you were at Union  
3 National Bank, and maybe tie that to the titles you  
4 held?

5 A I was employed continually by Union  
6 National Bank from beginning business January 1976,  
7 until its merger with Worthen Bank of Little Rock,  
8 which occurred -- it was finalized -- I am not sure  
9 of the final date, sometime in 1992, late '92.  
10 Actually, I think that final merger occurred, in the  
11 first quarter of 1993, sir.

12 Q And you were at the bank until that merger?

13 A That's right. I also began -- I was also  
14 given permission to initiate our partnership, Berry &  
15 Associates. But I was asked to stay by the acquiring  
16 entity until the final merger of those two banking  
17 entities was completed.

18 Q And you started out as vice president and  
19 later became a senior vice president?

20 A That's correct. And I have forgotten the  
21 year I was promoted. It would have been sometime  
22 after the completion of my graduate banking studies,

---

10

1 which the industry recognizes.

2 Q That's okay.

3 What generally were your responsibilities  
4 at Union National Bank?

5 A I had a responsibility for working the  
6 liability side of the balance sheet. I called on and  
7 sought business from a broad range of customer  
8 profiles including press services, other banks,  
9 individuals, companies, and I also had a -- was  
10 assigned to -- had a responsibility for government  
11 accounts, including state, city, and county.

12 Q By government accounts, you mean accounts  
13 that various government entities had?

14 A Everything from water districts and county  
15 clerk to city accounts up to and including state  
16 treasurer accounts.

17 Q Now, would personal accounts held by  
18 government officials also fall under that area?

19 A No. I called on -- no, when I speak of  
20 government accounts, we talked about strictly those  
21 accounts that were public accounts, the balances of  
22 public entities.

1 Q Did you do some lobbying while you were at  
2 Union National Bank?

3 A Yes, I registered and routinely covered all  
4 sessions of the state legislature. I also covered  
5 sessions of the regular meetings of our Pulaski  
6 County Quorum Court and the city of Little Rock board  
7 of directors meetings.

8 Q So --

9 A The whole range. My title was public  
10 affairs so I spent a third of my time on public  
11 service, a third of my time on the pursuit of  
12 business and -- well, I spent a third of my time on  
13 public service and a third of my time in -- two  
14 thirds of my time, excuse me, on the pursuit of  
15 business, banking accounts.

16 Q By "public service," is that the lobbying  
17 activities?

18 A No, sir. I spent a third of my time on a  
19 whole range of pro bono services to everything from  
20 cerebral palsy to Job Training Partnership Act  
21 activities of the city of Little Rock. Public  
22 service, community service projects is what I mean by

---

1 that third of my time.

2 Q So whatever lobbying you did, you are  
3 lumping into the two thirds?

4 A Two thirds, that's right.

5 Q The lobbying activities were part of your  
6 official responsibilities?

7 A Yes.

8 Q Who did you report to at Union National  
9 Bank?

10 A At various times that changed. It -- early  
11 in my career, I reported to Mr. Bob Connor, the  
12 president of the bank, that's C-o-n-n-o-r, and I  
13 reported to Mr. Hall McAdams, who was executive vice  
14 president and later chairman of the board. That's  
15 Herbert Hall McAdams, III. His father was the --  
16 through most of that time, was chairman of the  
17 board.

18 Q His father, the elder Herbert McAdams --

19 A Right.

20 Q -- owned a controlling interest in the  
21 bank; right?

22 A That's correct. I have forgotten the

1 percentages, but the four members of the McAdams  
2 family, owned -- well, they came to own almost -- it  
3 was all but the qualifying shares of the other  
4 members of the board of directors, so they would have  
5 had 95 plus or maybe 99 percent of the stock in the  
6 national bank. But as among the family members, I  
7 did not know what the fractions were.

8 Q Now, in your current employment with  
9 Berry & Associates and vice president -- I'm sorry,  
10 of Global USA, you -- you told me you do lobbying at  
11 the federal level?

12 A I have done some, yes.

13 Q How often do you speak to the President?

14 A I have no regular time to speak to the  
15 President. I see him from time to time. I have seen  
16 him -- I spoke to him in a receiving line last Monday  
17 night and prior to that it was some three weeks  
18 before that. I have maybe seen and spoken to the  
19 President 20 times since he has been President.  
20 That's -- I don't know whether that's an accurate  
21 figure or not. I estimate that.

22 Q That's a ballpark figure?

---

1 A Yes.

2 Q And I take it some of these contacts are  
3 social and some are business-related?

4 A No, most are -- all had been social. I  
5 also do some volunteer work in trying to be helpful  
6 to the committee to reelect, and various fundraising  
7 activities involving the -- functions of the  
8 Democratic National Committee. I am just a volunteer  
9 and try to help. I have no official capacity with  
10 either organization. So some of my conversations  
11 with the President, have been very limited  
12 discussions of those activities.

13 Q And you said you have talked to him about  
14 20 times since he's become president; was that  
15 accurate?

16 A I have seen and had brief, limited  
17 conversations with him.

18 Q Have you ever had conversations with anyone  
19 at the White House on behalf of one of your clients?

20 MR. IVEY: What's the relevance of that  
21 question?

22 MR. BARTOLOMUCCI: Just background,

1 establishing the nature of his contacts with the  
2 White House.

3 MR. IVEY: I think --

4 THE WITNESS: Yes --

5 MR. IVEY: Wait a second, Mr. Berry.

6 THE WITNESS: Yes.

7 MR. IVEY: My preference would be if you  
8 would direct the questions specifically to, you know,  
9 items in the resolution. I mean, if you asked if  
10 he's talked to him about Madison Guaranty or  
11 Whitewater Development, I don't think I would have a  
12 problem with that.

13 I do have a problem with us getting into  
14 whatever business Mr. Berry maybe doing that doesn't  
15 have anything to do with the resolution. You know, I  
16 used to lobby and I know that in some sense -- in  
17 some instances, it is not appropriate to disclose  
18 what you are doing on behalf of your clients. I  
19 don't know if that's the case for Mr. Berry or not.  
20 But I don't think we need to put him in that  
21 position.

22 MR. BARTOLOMUCCI: The resolution

---

1 doesn't -- we can ask him what his date of birth is,  
2 but some questions are background and the authority  
3 to ask them are fairly implicit in other items in the  
4 resolution, and in this case, I think this fairly  
5 goes to the nature of his involvement with the White  
6 House.

7 I have no intention of probing in any  
8 detail the -- what he does on behalf of clients with  
9 the White House, but I did want to have a sense of  
10 who he talks to at the White House because then that  
11 can exclude certain possibilities later.

12 MR. IVEY: I don't have any problem with  
13 that type of questioning. I do have a concern about  
14 asking specifically about the substance of what he  
15 may have lobbied on.

16 MR. BARTOLOMUCCI: I had no intention of  
17 asking anything like that.

18 THE WITNESS: The appropriate answer is I  
19 have never requested any member of the White House  
20 staff or the President to make an appointment for me  
21 anywhere in the executive branch of government, never  
22 at any time during his presidency. I have, for



1 information purposes, informed different people in  
2 the White House of some of my activities, and I --  
3 when I have been asked what are you doing, Paul, well  
4 I am working on this, that and the other, I have had  
5 that kind of conversation.

6 BY MR. BARTOLOMUCCI:

7 Q So, are you telling me that you haven't had  
8 any conversations with White House employees which  
9 were on behalf of clients as part of your lobbying --

10 A I have had conversations as to process,  
11 how -- what the timing will be on matters, and what  
12 the process will be, with the establishment of the  
13 administration's position on the range of issues.

14 Q Now, you told me that you do lobbying at  
15 the federal level?

16 A Yes.

17 Q And I assume that means some interaction  
18 with government employees, so is it members or staffs  
19 of the legislature that you have been involved with?

20 A I have -- yes, and I have also called on  
21 various branches of the administration -- of the  
22 executive branch of government. I have arranged

1 meetings for clients, with the various officials in  
2 the executive branch. But your question was about  
3 the White House.

4 Q That's correct.

5 Turning your attention back to the Union  
6 National Bank.

7 A Yes.

8 Q During the time that you were there, were  
9 you aware of the fact that the bank had made an  
10 unsecured \$20,000 loan to Bill Clinton and Jim  
11 McDougal?

12 A Yes, sir.

13 Q Did you have any involvement --

14 A Are you aware that we had a program at  
15 Union National Bank where we routinely provided  
16 unsecured loans to individual accounts? That  
17 marketing device was called "prestige banking." We  
18 identified young professionals and offered to them a  
19 \$10,000 line of unsecured credit if they would open  
20 their checking accounts with us.

21 Q So, what you are telling me, the bank had a  
22 policy of extending \$10,000 of credit to those young

1 professionals who opened --

2 A Yes.

3 Q -- new accounts?

4 A Yes. Many banks had that at that time that  
5 kind of program. It generically had different names  
6 for it.

7 Q Was this \$20,000 loan to Bill Clinton and  
8 Jim McDougal made as part of the program you have  
9 just described?

10 A No. It was not unusual. The loan was made  
11 to Mr. Clinton and Mrs. Clinton. I had solicited  
12 their personal banking business and we had their  
13 personal accounts. And when they had a credit need,  
14 we were -- I was the one that introduced them, as I  
15 recall to Mr. Denton.

16 Q I want to be clear on something. It is our  
17 understanding that I described, which was --

18 A Yes.

19 Q -- granted in June of '78 was a loan to  
20 Bill Clinton and Jim McDougal, and neither of their  
21 spouses were parties to that loan. You mentioned --

22 A I didn't see the signed loan agreement. I

---

20

1 thought it was to Mr. and Mrs. Clinton. I thought  
2 she was on the note also, but I have never seen that  
3 original loan document.

4 Q I just wanted to make sure we were talking  
5 about the same thing.

6 A Mr. McDougal was already a customer of the  
7 bank when that loan was made; a loan customer, too.

8 Q You just said you solicited the Clintons'  
9 personal banking business for the bank?

10 A Yes.

11 Q Does that mean you were involved in the  
12 making of this loan we are talking about?

13 A I was involved in that to the extent that I  
14 had asked them to bank with us, open their personal  
15 banking accounts with us, and we had personal  
16 accounts, banking accounts, of the Clintons, and we  
17 routinely call on all our customers, if they had a  
18 credit need, if they wanted to borrow money, that was  
19 our business.

20 Q Now, it wasn't your idea for Bill Clinton  
21 and Jim McDougal to borrow this money; right?

22 A No, they had -- they were contemplating

1 this investment that has become known as Whitewater,  
2 and then Attorney General Clinton, and I discussed  
3 whether or not they were going to do that and I said  
4 if you make the decision to do so, we would like  
5 to -- it would be my guess that we would like to make  
6 that loan.

7 Q This is June of '78, so you are no longer  
8 living with Mr. Clinton; right?

9 A No, I was not. He was the Attorney  
10 General-elect -- I mean, he was the Attorney General  
11 at that time and was running for governor for first  
12 term. He was the Democratic nominee for governor at  
13 that point.

14 Q And he approached you and said, McDougal  
15 and I have this business deal and --

16 A I don't know whether he approached me or --  
17 we were together frequently during that period of  
18 time, and in the course of a conversation, he made me  
19 aware of this possibility.

20 Q What did he --

21 A I had bought a place on the White River  
22 myself, lower down, and we were talking about -- a

1 number of people were interested in land in north  
2 Arkansas.

3 Q What did he tell you about the business  
4 deal that he was getting into with Mr. McDougal?

5 A Well, the preliminary discussion in my  
6 memory was simply that he and Mrs. Clinton were  
7 thinking of trying to buy a small place up on the  
8 White River, for a vacation getaway place for  
9 recreation. That was in the original discussion.

10 Q As we now know, that's not the form that  
11 the deal took, which was in fact --

12 A No. I was never party to any discussions  
13 where either of the Clintons were present with  
14 Mr. McDougal. I knew Mr. McDougal during that period  
15 of time quite well, also.

16 Q Okay, so I just wanted to clear up one  
17 thing. It was then-Attorney General Clinton who  
18 talked to you about the possibility of a loan, rather  
19 than Jim McDougal?

20 A That's right. We discussed it.

21 Q And I assume at some point you guys decided  
22 that in fact --

1 A I thought it was a good -- I thought it  
2 would be a good thing for him.

3 Q And --

4 A Little did I know.

5 Q Did he tell you that he wanted \$20,000?  
6 How did that figure come about?

7 A I don't -- there was no figure that I  
8 recall in the original discussion. There may have  
9 been some estimate of what a piece of land within  
10 this development and some sort of cottage or house  
11 would cost, but I don't specifically recall a number  
12 being said.

13 Q After you --

14 A We knew it would be a relatively small  
15 loan.

16 Q \$20,000 being relatively small?

17 A Yes. That size loan at that point within  
18 our bank was not a large loan at all.

19 Q Now, what did you do after you understood  
20 that the Attorney General wanted to take out this  
21 loan? Did you approach someone at the bank?

22 A Yes.

1 Q Okay, what did you do?

2 A As I recall -- I don't have specific  
3 recollection of making a formal appointment. I  
4 was -- my office at the bank was -- I was in the main  
5 lobby at this point and Mr. Denton's office was in --  
6 just off the main lobby on the same floor and I  
7 routinely spoke to members of the loan department  
8 about customers that I had solicited their business,  
9 and in the course of the conversation, if they  
10 mentioned a credit need, as part of my duties, I  
11 reported such credit needs for existing or potential  
12 customers to the loan department. And I mentioned  
13 this to Mr. Denton or -- and I am sure I apprised him  
14 of this potential credit need.

15 Q Mr. Denton was loan officer at the bank?

16 A Senior vice president, a senior lender of  
17 the bank. He could commit the bank's legal limit by  
18 himself, which was probably 4-, 5- or \$6 million.

19 Q And Mr. Denton is the person who formally  
20 approved the loan; correct?

21 A That's my recollection. Again, I don't --  
22 I don't recall ever seeing the actual loan documents,



1 but I believe my memory is that he was the loan  
2 officer of record, sir.

3 Q Is there some reason why you didn't simply  
4 approve the loan yourself?

5 A I was not a loan -- I was not a loan  
6 officer. Well, actually I could make -- I had a few  
7 loans that I made, but my loan limit was lower than  
8 that. I was a liability man. I did not do loans.  
9 That's not my normal job.

10 Q So you didn't have the authority to make a  
11 loan of that size --

12 A I didn't have authority to make a \$20,000  
13 loan, and ultimately, was not in the loan business at  
14 all for the bank. That was not part of my duties at  
15 all.

16 Q Now prior to the time that you approached  
17 Mr. Denton, did you discuss the possible loan with  
18 the elder McAdams?

19 A I may have -- prior to my discussion with  
20 Mr. Denton?

21 Q Right.

22 A I -- I doubt that I did.

1 Q So --

2 A In 1978, both Attorney General Clinton, and  
3 his wife, Hillary Clinton, she had joined the Rose  
4 Law Firm at that time, and their profile fit  
5 precisely the very kind of people that we were trying  
6 to get to bank with us, that he was a public figure,  
7 was -- we tried to be careful to document anything we  
8 do with a public figure, maybe even more so than we  
9 did with other loan customers. Because routinely,  
10 the statements of candidates or public officials  
11 while they were not required by law, they often as a  
12 matter of campaign issues were disclosed, so we  
13 wanted to have things always ready in case they were  
14 in the public domain.

15 Q Was it your belief that it would benefit  
16 the bank to have the Attorney General as a loan  
17 customer?

18 A No more than anybody else's -- yes, we  
19 charged interest. Charged him the same interest we  
20 would charge anybody else in similar credit  
21 circumstances.

22 MR. IVEY: Hold on a second, Mr. Berry.

1 THE WITNESS: It was not discounted at  
2 all. We charged him what the going rate was.

3 MR. IVEY: Give me a second, Mr. Berry.

4 Could you read back the question and the  
5 answer, please.

6 (The reporter read the record as requested.)

7 MR. IVEY: Sorry to interrupt.

8 THE WITNESS: All right.

9 BY MR. BARTOLOMUCCI:

10 Q Now, do you remember what the -- let me  
11 withdraw that and start again.

12 When you talked to Mr. Denton, did you say  
13 this is a loan that we should consider making, or did  
14 you tell him more definitively that this loan was to  
15 be made?

16 A I never told Mr. Denton any loan had to be  
17 made. I didn't have that kind of authority vis-a-vis  
18 Mr. Denton. He had much more authority than I did.

19 Q Did you tell Mr. Denton that this was a  
20 loan that Mr. McAdams wanted to be made?

21 A Never.

22 Q Did you tell Mr. Denton that --

1 A It was obvious to Mr. Denton who Mr. and  
2 Mrs. Clinton were, and Mr. Denton already had a  
3 customer relationship with Jim McDougal, who was one  
4 of his borrowing customers.

5 Q I don't suppose you saw Mr. Denton's  
6 testimony two days ago before our committee?

7 A No, I did not. I have now read a quick  
8 paragraph in the newspaper accounts, but I did not  
9 see the hearings for the last two days. I have had  
10 total distractions because of personal family  
11 matters, and I am at a serious disadvantage. I don't  
12 know what has been said.

13 Q Well --

14 A All I know to do is tell the truth as I  
15 remember it.

16 Q And obviously that's all we are asking  
17 for.

18 And I will be happy to give you a synopsis  
19 of Mr. Denton's testimony because we are not looking  
20 to hide the ball here?

21 A He has had a lot more practice at his  
22 testimony. Make sure that's in the record.

1 MR. BARTOLOMUCCI: It is on the record.

2 MR. IVEY: It is in there.

3 THE WITNESS: You bet.

4 BY MR. BARTOLOMUCCI:

5 Q Now, Mr. Denton said he couldn't recall  
6 exactly but he was sure that it was either you or  
7 Mr. Gene Smith that approached him about this loan.

8 A Gene Smith was executive vice president of  
9 bank at that time, and Gene Smith may have spoken to  
10 Mr. Denton. I have no knowledge of that. I actually  
11 worked with Gene Smith. He, from time to time, was a  
12 de facto supervisor of mine, but I was the one that  
13 spoke to Mr. Denton first. And whether anybody else  
14 ever talked to him about this, I do not know.

15 But we routinely, in bank procedures, had  
16 every Friday morning a bank officers loan review,  
17 which was led by the loan department, marketing  
18 department. All departments of the bank had  
19 representation at that meeting so all the business of  
20 the bank was discussed, what customers we lost and  
21 what customers we had gotten, and what loans had been  
22 made.

1 So that we tried to coordinate and  
2 everybody was informed as to what was going on, and  
3 this loan would have been discussed at this meeting  
4 at the appropriate time, so it was not unknown that  
5 this loan -- within the bank this loan had been made  
6 to the Attorney General.

7 Q No, and just to --

8 A And I was a strong advocate. I wanted the  
9 loan made. I made no bones about that. I thought it  
10 was good business, sir.

11 Q Now, it was Mr. Denton's testimony that  
12 either you or Mr. Smith came to him, to Mr. Denton  
13 and said, approve this loan. This is a loan this  
14 Mr. McAdams wants to be made.

15 A No, that would not have been what I said at  
16 all.

17 Mr. McAdams was quite capable of speaking  
18 for himself. I had been an account officer on the  
19 bank accounts of Attorney General Clinton and  
20 Mrs. Clinton. They had a credit need, and I reported  
21 it to the appropriate loan-making authority within  
22 Union National Bank.

1 Mr. Denton was well aware of who the  
2 Clintons were. We all wanted that business.

3 Q Now, it was also Mr. Denton's testimony  
4 that --

5 A And I urged that the loan be made, for both  
6 because I thought it was good banking business and  
7 because these were the kind of customers we wanted at  
8 Union National Bank. In my opinion, we wanted those  
9 kind of customer. I know I wanted them.

10 Q You would have said that to Mr. Denton?

11 A Yes.

12 Q Just to make sure I have this straight, you  
13 approached Mr. Denton. You discussed this loan with  
14 him?

15 A It was routine. I frequently found credit  
16 needs from customers that I was calling on and I  
17 always reported all such credit needs to the loan  
18 department.

19 Q And you told Mr. Denton that this was a  
20 loan to the sort of people that the bank was looking  
21 for?

22 A Yes. We already had their business. I

1 wanted their loan business, too. We had their  
2 checking business. I wanted their loan business.  
3 That was the principal source of revenue for the  
4 bank, loans.

5 Q Did you tell Mr. Denton that then-Attorney  
6 General Clinton was a rising political star, or words  
7 to that effect?

8 A I didn't have to. It was obvious. He had  
9 been elected Attorney General and was the Democratic  
10 nominee for governor.

11 Q All right, so --

12 A And he knew. I didn't have to talk to him  
13 much. Get this in perspective. We already know knew  
14 Mr. McDougal's speculation real estate business and  
15 were loaning money to him for that purpose.

16 Q Those were deals that also involved former  
17 Senator Fulbright; right?

18 A I don't know. Again, I did not see those  
19 loan documents. I knew that Jim McDougal was a  
20 borrowing customer of Union National Bank. I did not  
21 see those loan documents either.

22 Q Now, did you have any involvement in this



1 loan after your conversation with Mr. Denton?

2 A Not that I recall. I may have -- I may or  
3 may not have been involved in hand-carrying a loan  
4 extension agreement. Normally those were sent out by  
5 mail. But Mr. Denton may well have asked me. It was  
6 not unusual for me to -- if any of my customers  
7 needed a loan extension, sometimes we hand-carried  
8 those to customers.

9 Q Now, there was another loan at Union Bank,  
10 actually Union Bank took a 50 percent participation  
11 in a loan, that was made by the Citizens Bank of  
12 Flippin?

13 A Yes.

14 Q And this was the loan that was actually the  
15 mortgage on the Whitewater property.

16 Did you have any involvement in Union  
17 Bank's participation in that loan?

18 A No, I went to the correspondent bank  
19 committee. That bank in Flippin was one of our good  
20 correspondent banks, and I knew that we had taken a  
21 participation from Citizens, but I did not know the  
22 details.

1 Q And you weren't involved in the making of  
2 that participation?

3 A No, no, I was not.

4 Q Bill Clinton or Jim McDougal neither of  
5 them talked to you about the participation?

6 A No, not at all. Mr. McDougal was the only  
7 person that I ever heard discussed as the prime -- as  
8 the principal, in these real estate deals.

9 Q Jumping back momentarily to the \$20,000  
10 loan.

11 A Yes.

12 Q Did you ever have a discussion about that  
13 loan, with Mr. McDougal?

14 A Not that I recall. I saw Mr. McDougal from  
15 time to time. He was in and out of the bank, not --  
16 out of Union National Bank not infrequently, and I  
17 would see him in passing, and I don't remember any  
18 specific discussions about it.

19 Q Okay, so it is your memory that it was --

20 A He offered my wife job at one point in  
21 another real estate project, which she declined.

22 Q That was probably a smart move.

1       A    Jim was -- Mr. McDougal was very successful  
2 in a number of his land deals up to this one.

3       Q    All right. Just to close the loop on the  
4 \$20,000 loan, so it is your memory that it was Bill  
5 Clinton as opposed to Mr. McDougal who talked to you  
6 about the loan, about having the bank make that loan?

7       A    He was the one that -- he discussed that he  
8 was contemplating, he and Mrs. Clinton were  
9 contemplating buying a piece of property on the White  
10 River, and I said well, if you need to borrow any  
11 money, I am sure we will like to handle it, which was  
12 my routine remark to all customers that I had a  
13 responsibility for when they expressed a credit  
14 need.

15       Q    At what point --

16       A    I didn't want them to go to some other  
17 bank. We would lose their business.

18       Q    At what point did you come to learn that  
19 the loan was not to finance the purchase of a piece  
20 of property for Mr. and Mrs. Clinton, but was in fact  
21 part of this larger deal to buy land and then sell  
22 lots?

1       A    I don't -- I don't remember ever  
2 specifically coming to understand the full scope of  
3 what that loan became, Mr. McDougal's -- the overall  
4 project. In my mind, I thought that -- the only  
5 thing that I ever really focused on was the original  
6 \$20,000. That it became involved or incorporated in  
7 a larger project was something that I -- that I don't  
8 have any specific memory of somebody sitting down and  
9 explaining to me.

10       Q    I want to jump ahead to the period 1987 and  
11 1988.

12       A    Yes.

13       Q    You are still at Union Bank at that point?

14       A    That's right. I was a senior VP by then.

15       Q    And you are still doing some lobbying on  
16 behalf of the bank?

17       A    I did a lot.

18       Q    Now during that time period, '87, '88, did  
19 you lobby on behalf of Union National Bank in favor  
20 of a bill which would permit banks to open branches  
21 throughout the county in which they were located?

22       A    Yes, I was the lead lobbyist in that, in

1 that legislative battle.

2 Q What do you mean "the lead lobbyist"?

3 A The suggestion to do that originated with  
4 Mr. Bob Connor, the president of Union National Bank,  
5 and I communicated with all the banks in Pulaski  
6 County, I think there were 11 or 12, and we were  
7 trying to do something in Pulaski County to meet  
8 principally the challenge of the non-bank banks, some  
9 67 non-bank banks had opened up banking facilities  
10 within the county.

11 Q When you say you were the leader --

12 A I said I was the lead lobbyist.

13 Q Lead lobbyist, there were other banks who  
14 were aligned with your bank?

15 A Yes.

16 Q Did that include the Twin City Bank?

17 A Yes, it did. Mr. Ed Penick, Jr. and I were  
18 together daily throughout the consideration of the  
19 countywide branching bill for Pulaski County.

20 Q Now, was Union Bank in North Little Rock?

21 A No. We were domiciled in Little Rock.

22 Q And it was your desire to have the bank be

1 able to open up branches in other parts of the  
2 county?

3 A Yes.

4 Q And that was not possible under the law as  
5 it was before the bill was enacted?

6 A That's right. That's right. Actually, the  
7 bill stated in counties where the population was  
8 300,000 or more, then commercial banks could branch.  
9 You see savings and loan, thrifts could branch not  
10 only wherever they wanted to in a county, they could  
11 also branch statewide by giving 30 days' notice and  
12 then they were in business wherever they wanted to  
13 be.

14 Both the non-bank banks, their competition  
15 was a serious concern to commercial banks, because,  
16 in all marketing studies that we were aware of at  
17 that time, convenience to the banking location was  
18 the number one consideration that customers had in  
19 establishing their banking relationships.

20 Q Now, I take it that there was some pretty  
21 substantial opposition to the proposal that you were  
22 lobbying for; right?

1 A There was -- yes, there was. It was  
2 controversial, in 1987, among commercial banking  
3 interests.

4 Q So, some banks opposed the bill?

5 A Yes.

6 Q Would you say that most banks opposed the  
7 bill?

8 A No.

9 Q And the Arkansas Bankers Association was  
10 opposed to the bill; is that right?

11 A That's right.

12 Q And that was an, or is a prominent and  
13 respected trade association in the state?

14 A Yes.

15 Q And was there also some opposition within  
16 the --

17 A They had also opposed the opening of teller  
18 windows and branches -- historically, each one of  
19 these battles to what I called bank geography  
20 issues. Historically, they had opposed every change  
21 in the modernization of bank branching loans.

22 Q So their opposition was a problem in terms

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1 of getting the legislation passed?

2 A Yes.

3 Q But the bill did ultimately pass?

4 A Yes, it did in 1987.

5 And that was the signal to -- that we had  
6 an ad hoc group of banks that cooperated. We had --  
7 I think there were 11 or 12 commercial banks in  
8 Pulaski County and all but three supported this  
9 within Pulaski County. Then we had various banks  
10 throughout the state that supported this  
11 legislation --

12 Q Now, the --

13 A -- even though it would not have affected  
14 them initially. They knew that the modernization of  
15 bank branching laws was on the horizon that we needed  
16 to begin and this was -- we had this battle and it  
17 was controversial, and we prevailed. Our side of it  
18 prevailed, and ultimately it led to a compromise that  
19 resulted in the special session of 1988, where the  
20 whole comprehensive revision of Arkansas branch  
21 banking laws was accomplished by consensus. It was  
22 not controverted at that point, or not seriously.



1 Q Now, the law as enacted only applied to  
2 counties in excess of a certain population level;  
3 right?

4 A That's right, and as a practical -- and  
5 that would have been an issue, whether or not that  
6 was constitutional under state law, Arkansas state  
7 law; in fact, a lawsuit was filed to try to negate  
8 the statute.

9 Q And the effect of that population limit was  
10 really to make the bill only applicable in Pulaski  
11 County?

12 A Well, that would have been an issue in the  
13 court decision and that's moot now. It is debatable  
14 whether, as a practical matter, Pulaski County would  
15 have been the first and only county that could have  
16 operated on the statute, but we had other counties  
17 with growing populations that I would have argued  
18 would have reasonably arrived at that population  
19 figures. It was either 300- or 200,000. I have  
20 forgotten the precise number.

21 Q I think it was 200,000.

22 A It may have been. I am sitting in a county

1 now that has -- that's getting close to that,  
2 probably 160,000.

3 Q Now, was there -- let me start again.

4 Was that particular population rule part of  
5 the legislation that you were pushing for?

6 A Yes. And as a practical matter it would  
7 not have affected any other county at the time it was  
8 enacted.

9 Q Now, why did you or why did the bank want  
10 that particular provision?

11 A Well, it made it as a -- as a part of the  
12 ability to pass it, that made it more passable since  
13 it would not have taken effect immediately statewide,  
14 and it was also recognized that the non-bank banks  
15 that were penetrating our market, especially on  
16 liability side of the balance sheet, were -- they  
17 came to Pulaski County first, and that's where we  
18 were losing deposits. I remember some 66 or 67  
19 non-bank banks operating in Pulaski County at the  
20 time we took up consideration of this legislation.

21 Q Now, the governor obviously signed the  
22 legislation?

1 A Yes.

2 Q Do you know if he was behind it from the  
3 get-go or did his position ever change?

4 A Never at any time, and there is no way he  
5 could have been involved without my knowledge of it,  
6 because he took a -- the administration, it was not  
7 an administration bill. They took a position of  
8 strict neutrality.

9 Q This was the governor's office which took a  
10 position of strict neutrality?

11 A That's correct, that's correct. And I am  
12 unaware of any conversation the governor had with any  
13 member of the legislature asking them to take a  
14 position, pro or con, to the legislation.

15 Q So is it your testimony that --

16 A In fact, one of his floor leaders in the  
17 Senate, then state senator Ben Allen was the  
18 principal leader of the opposition to the measure.  
19 One of his closest legislative allies and that vote  
20 in the Senate was a vote of 17 to 16. We won it by  
21 one vote on that side.

22 Q So you are telling me that the governor's

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1 office had no position on the legislation --

2 A That is exactly what I am telling you, and  
3 I know what I am talking about.

4 Q I am sure you do.

5 So is it your testimony that in the course  
6 of your lobbying on behalf of the bill, you or your  
7 coalition had no contacts with the governor's office  
8 about it?

9 A No contact during the course of it, except  
10 that we hoped that they would maintain a position of  
11 strict neutrality, because they had -- they had  
12 strong friends and allies on both sides of that  
13 issue.

14 Q Well, it would have been benefited you,  
15 wouldn't it, if the governor had come out in favor of  
16 the bill?

17 A Oh, sure, it would have made my task  
18 easier.

19 Q And didn't you want him to come out in  
20 favor of it?

21 A I didn't think it was -- no, I didn't want  
22 him to come out in favor of it because I thought it

1 would have been a bad mistake on his part to get  
2 involved in what was really an intermural fight among  
3 commercial banks in Arkansas.

4 Q So part of your lobbying plan wasn't to get  
5 the governor or the governor's office behind the  
6 bill?

7 A Never.

8 Q Even though that would have been beneficial  
9 to the cause?

10 A Normally, a sitting governor if they make a  
11 bill, an administration bill, the general proposition  
12 that enhances the chance of passage of the bill, just  
13 as the converse is true, the governor's opposition to  
14 a proposed -- to a bill is a serious obstacle to  
15 overcome, and I just did not think it was a wise move  
16 for us to try to involve the governor's office, and  
17 subsequently my judgment proved to be correct. I did  
18 want him to sign the bill. The opposition did speak  
19 to him, and tried to -- and asked him to veto the  
20 bill, and at that point, I asked him not to veto it,  
21 that we had had the fight and we had prevailed, and  
22 that was the extent of my conversations with

1 then-Governor Bill Clinton about that countywide  
2 branching measure.

3 Q So you did have a conversation with him  
4 about it?

5 A After the bill had passed, sir, and was in  
6 his office.

7 Q I understand.

8 A You asked me about -- did I try to get him  
9 to help me pass it, and the answer was no, never.

10 Q I guess I was unclear in the question I was  
11 trying to ask.

12 A Well, there is a big difference and a very,  
13 very clear distinction between what you asked me.  
14 And at the point that the bill was on his desk, the  
15 opposition was trying to get him to veto it, and at  
16 that point, as a practical matter he had stayed out  
17 of it, we had had a big fight in the legislative  
18 arena, our side had prevailed, and we said, the  
19 appropriate thing was then sign the bill. We urged  
20 that position, and he did sign the bill.

21 Q Okay, let me make sure I get this  
22 straight.

1 In that period up to the time the  
2 legislature passed the bill --

3 A That's right.

4 Q -- you had no contact with the governor or  
5 the governor's office about the bill?

6 A Not to ask him to -- exactly. And the  
7 governor's legislative liaison, to my knowledge, did  
8 not involve themselves in the legislative battle.  
9 They could not have -- they would have been aware of  
10 it, no question of that. It is their job to be aware  
11 and to review every single bill that was introduced  
12 in the legislature. That is the practice of all  
13 governors in Arkansas. I'm sure that's the practice  
14 of governors in every state. And they monitored its  
15 progress, but I had no -- I never asked for help from  
16 them, and only approached the governor after the  
17 bill's passage, when I knew and had confirmed that  
18 the other side was in his office trying to get him to  
19 veto it.

20 Q Let's stick for a moment to the period  
21 before the legislature had passed it.

22 A Yes.

1 Q I know you testified you didn't have any  
2 contacts in terms of trying to get help for the  
3 bill.

4 A That's right.

5 Q I mean, were there other contacts in terms  
6 of, say, just trying to persuade the governor's  
7 office that the bill was a good one, but not  
8 necessarily asking for help?

9 A No. I saw -- it is impossible to be in the  
10 Arkansas capital during a legislative session and not  
11 encounter everyone involved in the legislative  
12 process, including the legislators, the lobbyists  
13 that are working with you, working with the  
14 governor's office and working against you. We are  
15 often standing right by each other. That is the rule  
16 rather than the exception.

17 Q I take from that it is possible that you  
18 had some communication with him regarding the bill by  
19 virtue of the small area?

20 A No, I never -- I never did talk to the  
21 governor, to my recollection, about this bill. I  
22 can't say categorically that at no time did anybody



1 say, Berry, how are you coming on your banking bill,  
2 in the course of standing in the committee room. But  
3 we never sought to involve -- I never sought to  
4 involve the governor's office in that legislative  
5 battle, nor to my knowledge did anybody on our side  
6 try to do that.

7 Q All right. So the bill was passed by the  
8 legislature, and then you did have one conversation  
9 with the governor about the bill; right?

10 A I am trying to remember whether it was a  
11 conversation or whether I sent him a note reviewing  
12 legislative history and what I thought the political  
13 facts were.

14 Q And you said you did this because the --

15 A I either did that orally or by note, and I  
16 am not certain which I did. That's -- that's a  
17 pretty long time ago.

18 Q And you did this because the folks on the  
19 other side were trying to urge him to veto the bill?

20 A Of course.

21 Q And do you remember what the substance --

22 A Can you imagine not trying to offset the

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1 forces trying to get him to veto something after the  
2 battle we had been through?

3 Q No, I am not surprised you did talk to him  
4 about it.

5 A Right. Well, I don't know whether I talked  
6 or sent him a note.

7 Q Right, I understand.

8 A I did one or the other.

9 Q What do you remember about the substance of  
10 this communication, whether it was oral or in  
11 writing?

12 A Well, the subject was all the reasons for  
13 him not getting involved, when I didn't ask him to  
14 take a position supporting our bill, was -- were  
15 clearly evident. We had heard from almost all the  
16 banks, all the commercial banking interests in the  
17 state. It was clear that the more progressive  
18 elements, those that supported a modernization of  
19 branching and/or multibank holding company, using  
20 that tool, that that was becoming -- that was both  
21 the national trend and this was clearly a signal that  
22 Arkansas banking interests, a majority, albeit a

1 narrow majority at this point, were supporting a  
2 change in our branching laws.

3       Actually, this fight in 1987 served a  
4 purpose. After we had this battle over what would  
5 have been countywide branching in Pulaski County, a  
6 number of meetings and exchanges were held among  
7 banking interests, and agreed-upon strategy was  
8 enacted in 1988 which took up all of the major issues  
9 that were dividing commercial banking interests in  
10 Arkansas, and essentially we arrived at a consensus  
11 compromise. And so -- and much of that was triggered  
12 by the fight we had in 1987.

13       Q   Now, when you communicated with the  
14 governor about the bill --

15       A   Yes.

16       Q   Did you apprise him of the fact that Union  
17 National Bank was behind the legislation?

18       A   I listed, as I recall, I -- yes, he would  
19 have been aware of that because he knew where I  
20 worked.

21       Q   I mean, my question was --

22       A   It was in the -- I mean there was no

1 question about what our bank's position was. It had  
2 been in the public domain for weeks. We had  
3 circulated our position to all the counties. We had  
4 even -- before we ever introduced this bill, we even  
5 sent a copy of what we proposed to those banks that  
6 were most vociferous in their opposition. We didn't  
7 take anybody by surprise, sir. We had notified  
8 everyone.

9       Q   So the governor would have known which  
10 banks were behind the bill and which banks were  
11 opposed to it?

12       A   I don't know. I can't testify as to what  
13 the governor knew.

14       Q   You just said he would have known that  
15 Union Bank was behind it?

16       A   Yes, because that was in the -- he would  
17 have known our bank's position.

18       Q   Because he knew you and your position?

19       A   Because we took a role in the legislative  
20 balance. Whether he knew of all the banks from  
21 around the state had a commented either directly or  
22 by mail, I don't know what the governor knew and

1 didn't know about other banks. I'm sure he was aware  
2 of some of the banks that opposed it. He would have  
3 been well aware of his friends and those that were  
4 some of his closest allies in the state Senate, their  
5 opposition, he would have been aware of that, I  
6 assume.

7 Q Now, a moment ago when I asked you whether  
8 you apprised him of who was behind the bill, I think  
9 you started to mention a list.

10 A Well, I knew who was for us and who was  
11 against us, and I don't know whether he knew it or  
12 not. I never sent him a list of the proceeds -- I  
13 mean the fors and the againsts, the ayes and the  
14 nays.

15 Q You told us Twin City Bank was part of your  
16 coalition; right?

17 A Yes.

18 Q That's a bank that was held by a company  
19 called TC Bankshares?

20 A That's right.

21 Q That company also controlled First Ozark  
22 National Bank; is that right?

1 A That's right. That was -- I think that was  
2 a multi -- that was a bank that they owned at their  
3 multibank holding company level.

4 Q Would the governor have been aware that  
5 either First Ozark or TC Bankshares was supporting  
6 legislation?

7 A I don't know. Ed Penick, Jr. and I were  
8 daily in the capital walking the halls and working  
9 for the passage of the legislation we supported, and  
10 it was not secret. But again, I am unaware of  
11 Mr. Penick ever talking to the governor or the  
12 governor's staff. He may have, but I don't know that  
13 he did.

14 Q Do you recall if Mr. Penick joined in your  
15 communication to the governor?

16 A I don't think he did. He knew that I was  
17 communicating and this was at the point where we were  
18 trying to make sure the governor -- that the forces  
19 who were seeing the governor urging him to veto the  
20 measure, that we offset their position with our own.  
21 We just -- and he may have communicated. I don't  
22 recall. Well, I don't recall whether he did or he

1 didn't. I know I did.

2 Q Now, I take it you know a reporter named  
3 John Brummet?

4 A Yes, I do.

5 Q You were interviewed by Mr. Brummet about  
6 this same matter?

7 A I guess.

8 Q How did that come about? Did he call you  
9 or --

10 A When are you talking about?

11 Q It would have been --

12 A People have known about this during the  
13 course of the battle, too.

14 Q I'm sorry, in 1996, very recently. You  
15 talked to him about this; right?

16 A Yes.

17 Q How did that come about?

18 A There was an account in the paper, in the  
19 Democrat-Gazette, that had a number of factual errors  
20 in it, and I don't know whether John called me or I  
21 called him. I think I called him, sir. John -- you  
22 recall this is inaccurate. I think this was the

1 Democrat-Gazette's exposition on some of the matters  
2 in the book "Blood Sport," which we now know has a  
3 number of inaccuracies.

4 Q I am not going to comment on that.

5 MR. IVEY: I will.

6 THE WITNESS: Can't even print page 2 of  
7 Mrs. Clinton's financial statement. If a junior high  
8 kid turned in an essay with that many factual  
9 mistakes, he would get an incomplete.

10 BY MR. BARTOLOMUCCI:

11 Q To return to your contact with Mr. Brummet,  
12 you read an article which you thought had so many  
13 inaccuracies, so you contacted him to set the record  
14 straight?

15 A Not to set the record, but to remind  
16 Mr. Brummet that he covered those issues, I said, I  
17 remember a lot of this very well and you have to  
18 remember 1987 was the year of decision with respect  
19 to -- he said that's exactly right. I mean we all --  
20 the real battle was over this small bill in '87, the  
21 more comprehensive revisions in Arkansas bank  
22 statutes in 1988 were triggered by this battle in '87



1 and everybody in banking circles, commercial banking  
2 circles, led by a great banker named Wayne Hartsfield  
3 in Searcy, Arkansas, who was strong in the opposition  
4 to our bill -- Mr. Hartsfield was a very worthy  
5 adversary, and his leadership managed to reconcile  
6 the differences or most of the differences among  
7 commercial bankers and he hammered out the  
8 compromise, was the leader in that after the battle  
9 in 1987.

10 Q Did anyone ask you or suggest to you that  
11 you contact Mr. Brummet or you decided that on your  
12 own?

13 A I decided that on my own.

14 Q You haven't had any conversations with  
15 anyone in the White House about this matter in recent  
16 months?

17 A I don't remember talking to anybody at the  
18 White House about that. I know some people have read  
19 it. And --

20 Q "It" meaning Blood Sport, or the article in  
21 the Democratic Gazette?

22 A Read the -- yes, read that paper. They get

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1 that paper on a daily basis, I assume.

2 MR. BARTOLOMUCCI: I have one more area to  
3 go into which might take a little while I wanted to  
4 offer you an opportunity to take a break before you  
5 did that.

6 THE WITNESS: Can you estimate how much  
7 longer we have to go?

8 MR. BARTOLOMUCCI: Well, my questions  
9 probably, probably be around 15 minutes or a  
10 half-hour, but then --

11 THE WITNESS: Let's keep going, if you are  
12 ready.

13 MR. BARTOLOMUCCI: That wouldn't be the  
14 end, because my colleagues on Minority staff would  
15 probably want to take some time with you. But if  
16 you --

17 THE WITNESS: I hope weak finish by 10:30.  
18 I really need to keep an appointment.

19 BY MR. BARTOLOMUCCI:

20 Q We will move forward. I will try to leave  
21 some time for my colleagues here.

22 You know Beverly Bassett Schaffer, right?

- 1 A Yes.
- 2 Q And her husband, Archie Schaffer?
- 3 A Yes.
- 4 Q Can you tell me briefly how you know them?
- 5 A I have known Archie Schaffer since 1970,
- 6 and I have known Mrs. Schaffer, well, for 12 years,
- 7 but I grew up in the same town that she's from and
- 8 I've known her daddy -- I have known the Bassett
- 9 family since the early '50s. I have known her family
- 10 since before she was born -- no, strike that. Since
- 11 she was a baby. But I have only known her as an
- 12 adult, very well since her courtship and eventual
- 13 marriage to my friend, Archie Schaffer.
- 14 Q So it's safe to say you are close with both
- 15 of them?
- 16 A Yes.
- 17 Q All right, now, have you ever had a
- 18 conversation with Beverly Schaffer about Hillary
- 19 Clinton's representation of Madison Guaranty?
- 20 A Yes. Subsequent to her testimony about
- 21 that.
- 22 Q "Her testimony" being Mrs. Schaffer's?

- 1 A Mrs. Schaffer's.
- 2 Q Mrs. Schaffer's?
- 3 A Yes.
- 4 Q When was your conversation with her about
- 5 this subject?
- 6 A I don't know. I have spoken to her a
- 7 number of times.
- 8 Q And what did you discuss?
- 9 A Well, on the -- it is -- why people cannot
- 10 understand the fundamental mistake in the original
- 11 article about the so-called preferred stock plan,
- 12 that one was never offered, that the original
- 13 question was simply, is there anything in Arkansas
- 14 law that would bar a state-chartered S&L to do a
- 15 preferred stock option, which was triggered by the
- 16 Federal Home Loan Bank Board, their circular,
- 17 advising federally chartered S&Ls to do preferred
- 18 stock and they would call it equity and not debt and
- 19 they would clean up their balance sheets so they
- 20 could live like they weren't broke.
- 21 Q You seem fairly well apprised of this
- 22 issue?

1       A   We routinely measure the financial  
2 statements of all our competitors including the S&Ls,  
3 most especially the S&Ls and we applied GAAP  
4 accounting measures to their statements and we were  
5 well aware that there were serious problems, most of  
6 the commercial people knew that.

7       Q   Other than this conversation subsequent to  
8 her testimony before the Senate, have you had any  
9 other conversations with her about this preferred  
10 stock matter?

11       A   I didn't -- I only knew the preferred stock  
12 issue, or the -- that question after it became public  
13 domain. I did not discuss any of that at the time  
14 she was sitting as the securities exchange  
15 commissioner for the state of Arkansas.

16       Q   Your conversation with her would have been  
17 this year, right, '96?

18       A   No, since -- actually all of this -- those  
19 issues have been raised since 1992, I think The New  
20 York Times had an article about it in late '92; isn't  
21 that correct.

22       Q   I think they did?

1       A   Once it became public domain, I was aware  
2 of it, and I see Mr. and Mrs. Schaffer often, and  
3 once that was in the paper, yes, we -- I don't know  
4 how many times we've shaken our heads, and been  
5 incredulous at the misunderstanding of the record.

6           MR. BARTOLOMUCCI: Off the record for a  
7 second.

8           (Discussion off the record.)

9           BY MR. BARTOLOMUCCI:

10       Q   Back on record.

11       Now, has anyone at the White House ever  
12 approached you about talking to Beverly Bassett  
13 Schaffer about this preferred stock matter?

14       A   No.

15       Q   You can say that categorically?

16       A   Yes.

17       Q   So --

18       A   I appreciate I am -- I would have -- I  
19 just -- the answer is no.

20       Q   And that would include Bruce Lindsey,  
21 Michael Waldman, Harold Ickes, Maggie Williams, none  
22 of these people ever talked to you?

1 A I have met Maggie Williams, but I can  
2 corroborate Mr. Ickes's testimony that he's never met  
3 me or heard of me. Actually, we have met in passing,  
4 but I have never had a conversation with Mr. Ickes,  
5 and he has no reason to recall me at all.

6 Q So you are familiar with Mr. Ickes's  
7 testimony?

8 A I did see that, because -- you asked about  
9 my name and I didn't -- strike that. I did not see  
10 his testimony. Friends called and said, "ah-ah, your  
11 name is being bandied about on television today," and  
12 I was teased by a number of friends that Harold Ickes  
13 never heard of me.

14 Q You know what the issue is there is some  
15 suggestion in these notes the White House was going  
16 to dispatch someone with the initials of PB to  
17 approach --

18 A And I fit the profile. My initials are PB  
19 and I knew Beverly and I was a banker and I am a  
20 friend of the President's, and all of those  
21 circumstances are true, and I think it is quite  
22 legitimate to ask me about it, but the answer is, I

1 was not the PB. I am sure it is Paul Begala,  
2 B-e-g-a-l-a, or if I am the PB, no one ever contacted  
3 this PB, sir, from the White House.

4 Q Thank you, PB.

5 A Right.

6 Q Just to run down one small aspect of this,  
7 you attended a showing of a movie at the White House  
8 in January of '94; is that right?

9 A Yes.

10 Q What was the movie?

11 A I have forgotten. I have been down  
12 there -- I have been to the movies several times, and  
13 I -- and I think it was that bad thing -- I won't say  
14 that because somebody -- I think it was a movie that  
15 had Jerry Lewis in it, but I have forgotten. I  
16 honestly don't remember the movie, the circumstances  
17 of January of 1994. There was a second Bluejeans  
18 Bash that weekend, and a number of Arkansans were in  
19 town, including me and my wife, Mary, and I had  
20 gotten a call from the White House, and it would have  
21 been from Nancy Hernreich or Marsha Scott, I guess,  
22 saying there is a movie tonight and I mean, the



1 president is inviting old friends and we knew you  
2 were in town, and we quickly accepted the invitation,  
3 and I was asked, do you know anybody else that's in  
4 town that we ought to invite. I said Archie and  
5 Beverly are in town. Do you know where they are  
6 staying? I said yes. Call them and ask them to call  
7 in their date of birth and Social Security number so  
8 they could be cleared in by security.

9 I called. I think Mr. and Mrs. Schaffer  
10 were staying at the Willard Hotel. And my memory is  
11 that I left a voice mail for them, and that they  
12 called in -- I didn't see them until -- they showed  
13 up at the movie, and so that's exactly how that  
14 occurred.

15 Q And just so our information is correct,  
16 Bruce Lindsey was at the movie, too?

17 A He might have been. I don't remember  
18 whether Bruce was there that night or not, sir.

19 Q Was the President there?

20 A Yes.

21 Q And Mrs. Clinton?

22 A Yes.

1 Q Did --

2 A Well, I believe Mrs. Clinton was there.  
3 One time I was at the movies, and she was traveling  
4 somewhere, but Mrs. Clinton's mother was present, and  
5 I don't remember whether it was that time or another  
6 time, sir.

7 MR. BARTOLOMUCCI: Off the record.

8 (Discussion off the record.)

9 BY MR. BARTOLOMUCCI:

10 Q Back on the record.

11 At this movie in January of 1994 --

12 A Yes.

13 Q -- was there any discussion about the  
14 preferred stock matter?

15 A No, I don't recall any at all.

16 Q You don't remember discussing it with  
17 Mrs. Schaffer?

18 A Not at all.

19 Q And you don't remember discussion from  
20 which one else?

21 A I don't remember -- this was strictly  
22 social and if there were any side conversations about

1 matters great or small, I am totally unaware of  
2 anything like that. It purely was social, and how is  
3 your mother, how is your daddy, jokes and that kind  
4 of thing, so it --

5 Q I'm sorry. Did you finish your answer?

6 A This occasion was specifically not about  
7 business of any kind.

8 Q So just to finish up on this, no one from  
9 the White House has ever dispatched you or asked you  
10 to talk to Mrs. Schaffer about this preferred stock  
11 deal?

12 A Not at any time.

13 MR. BARTOLOMUCCI: Off the record.

14 (Discussion off the record.)

15 MR. BARTOLOMUCCI: I don't have any more  
16 questions for you.

17 EXAMINATION

18 BY MR. IVEY:

19 Q Mr. Berry, this is Glenn Ivey. How are  
20 you?

21 A Fine.

22 Q I wanted you to read some of Mr. Denton's

1 testimony so you know about the allegations that he's  
2 made and you have an ability to respond to them.  
3 There are quite a few, and I will try to finish up in  
4 a half-hour so you can keep your subsequent  
5 appointment.

6 A Yes.

7 Q Let me start here.

8 "You approved this loan?

9 "Answer: I was instructed to grant the  
10 loan and I signed off the loan authorizing that funds  
11 be disbursed.

12 "Question: Who instructed you to make the  
13 loan?

14 "Answer: Herb McAdams. I was informed  
15 via one of his emissaries, a lobbyist that worked for  
16 the bank -- one of two persons, and I do not  
17 specifically recall -- would have been Eugene Smith,  
18 now deceased; the other person would have been Paul  
19 Berry. They both functioned in that capacity. And  
20 Smith died sometime along that period, I am not sure  
21 of the exact time of his death.

22 "Question: So either Smith or Berry came

1 to you and said we want you to or instructed you to  
2 approve this loan to McDougal and Bill Clinton?

3 "Answer: Yes."

4 Let me ask you a question. Now do you  
5 recall instructing Mr. Denton to make any type of  
6 loan to Mr. Clinton or Mr. McDougal?

7 A "Instructing" is the wrong verb. I  
8 informed Mr. Denton of the credit need, possible  
9 credit need of then-Attorney General Bill Clinton,  
10 who was an existing customer of the bank, and I did  
11 not ever say that I was instructing him for  
12 Mr. McAdams. Please recall, I was a vice president  
13 at that time, Mr. Denton was the senior vice  
14 president, the senior lender for Union National Bank,  
15 who could communicate with Mr. McAdams directly. He  
16 would have never accepted the fact that I was telling  
17 him. He would have talked to Mr. McAdams directly if  
18 there had been any such communication.

19 Q All right --

20 A That was not the tenor of our conversation  
21 at all.

22 Q So just so the record is crystal clear, did

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1 you ever instruct Mr. Denton to make a loan to  
2 Mr. Clinton or to Mr. McDougal?

3 A I never gave an instruction or an order to  
4 Mr. Denton in my life. I advocated making the loan.  
5 I wanted it to be done. I thought it was very  
6 positive. I wanted it to -- I thought it was a good  
7 thing.

8 Q Did you ever --

9 A I thought it was good business, and I  
10 thought -- there wasn't any problem at the time I  
11 spoke to Mr. Denton, because he was already doing  
12 business with Mr. McDougal. He knew more about this  
13 deal than I did.

14 Q Did you ever order -- did you ever tell  
15 Mr. Denton that Mr. McAdams had ordered him or  
16 instructed him to make a loan to Mr. Clinton or  
17 Mr. McDougal?

18 A No.

19 Q Okay, let me read some more of his  
20 testimony for you.

21 A Right.

22 Q "Question: What else did the emissary,

1 Smith or Berry, tell you at that time?

2 "Answer: I think I questioned the purpose  
3 of the loan, the reasoning for granting the loan, and  
4 was informed that the Attorney General was an  
5 up-and-rising political star and that it would be  
6 good business for the bank. Of course I had  
7 experience with McDougal, and even though I had been  
8 very successful in extending credit to McDougal and  
9 the Senator" -- the senator in this case being  
10 Mr. Fulbright?

11 A Yes.

12 Q -- "I do not believe we had extended  
13 unsecured credit, or credit without the Senator's  
14 endorsement, prior to this time. In my opinion, at  
15 that time, I would not have loaned Jim McDougal  
16 \$20,000 unsecured."

17 A Well, I have heard him discuss other loans  
18 greater than that that he made to people unsecured.

19 Q Let me go through this point by point. Did  
20 he question the purpose of the loan with you?

21 A No. Let me back up. I would have said in  
22 presenting the -- what I thought was going to be a

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1 request, a loan application from then-Attorney  
2 General Clinton, that I thought that it was to make a  
3 development on a piece of land in White River that  
4 Jim McDougal was the principal in, the principal  
5 owner of.

6 Q Okay, did --

7 A And of course I -- in the -- I had no  
8 specific memory of whether we talked about Clinton as  
9 a rising star or not. We may -- that may well have  
10 been in the discussion.

11 Q Okay. But --

12 A It was true.

13 Q Yes, sir, but did he ever tell you that he  
14 thought, it will not have been appropriate to extend  
15 that line of credit to Mr. McDougal or Mr. Clinton?

16 A No.

17 Q Let me read some more of his testimony for  
18 you. This is from page 27 of his deposition, where  
19 he refers to the minutes from the director's loan  
20 meeting.

21 Says "I notice on the officers loan" -- "I  
22 note on the officers loan review committee that Paul



1 Berry was in attendance, so apparently both of the  
2 lobbyists were working at the bank at this time.

3 "Why do you describe them as lobbyists?

4 "That was their primary function; they  
5 were in public relations but primarily functioned as  
6 lobbyists throughout the year, particularly during  
7 the legislative session."

8 A What's the question?

9 Q Do you recall attending these officer loan  
10 review committee meetings?

11 A Of already testified that I routinely --  
12 yes, I regularly attended.

13 Q Do you recall any meetings at which the  
14 loan to Mr. Clinton and Mr. McDougal were discussed?

15 A I have no specific recollection of such  
16 discussion in a meeting, but I remember that it was  
17 discussed at a meeting.

18 Q Do you remember anyone objecting to the  
19 loan being made?

20 A No, everybody was proud to have the  
21 business.

22 Q Do you recall if Mr. Denton was present at

1 that meeting?

2 A If --

3 Q I know it's been quite a while.

4 A The procedure was whoever was the loan  
5 officer of record was the one that presented those  
6 loans to the officers loan committee. So, it would  
7 have been unusual if Mr. Denton was not the one  
8 presenting it. My recollection is he is the one that  
9 presented it.

10 Q Let me ask you if you were aware of any of  
11 the details of loan beyond bringing the loan  
12 opportunity to Mr. Denton's attention.

13 A No, I just would -- I know that they --  
14 with any public figure, we were always careful, one  
15 or the other of us would always mention that it had  
16 to be at whatever the going market rate was.

17 Q Was it your understanding that this loan to  
18 Mr. Clinton and Mr. McDougal was at the market rate?

19 A Yes.

20 Q You are aware of them receiving any super  
21 or special treatment with respect to the terms of the  
22 loan, either in amount or duration?

1 A No.

2 Q Are you aware of some sort of program or  
3 practice at Union National Bank at which loans were  
4 routinely made to prominent political officials,  
5 merely by virtue of the fact that they were prominent  
6 political officials?

7 A No.

8 Q Do you recall bringing any other loans to  
9 Mr. Denton on behalf of --

10 A Sure, many. Many -- a number of loans over  
11 the course of years we have worked together.

12 Q I take it the prospective customers covered  
13 a range --

14 A The troubled loans that Mr. Denton came to  
15 have weren't the loans I brought to him.

16 Q I'm sorry. I didn't follow you there.

17 A I said the loans that I was able to  
18 identify and bring, the loan customers I brought to  
19 Mr. Denton were not problem loans.

20 Q In other words, these were loans that were  
21 repaid?

22 A Sure.

1 Q Are you aware that Mr. Clinton and  
2 Mr. McDougal repaid their loan in full?

3 A Not specifically. I mean, I didn't know  
4 there was any problem.

5 Q Did Mr. Denton ever raise any questions  
6 with you at all about this loan?

7 A No. We may have had a conversation with  
8 respect to an extension. I have no memory of that.

9 Q I take it from your prior testimony you  
10 never discussed this loan with Mr. Smith, at least to  
11 your recollection?

12 A No. Mr. Smith would have been aware of the  
13 loan. He also attended those officer loan review  
14 meetings and he would have known about -- he would  
15 have known and been pleased that this loan was made,  
16 was pleased.

17 Q Okay. Did you ever get the sense that  
18 he --

19 A And Mr. McAdams was aware of the loan.  
20 Everybody on the -- the senior officer and the  
21 executive committee at the bank was aware that the  
22 Attorney General and Mrs. Clinton did business with

1 us. In fact, the whole Rose Law Firm as a firm did  
2 an amount of business, actively pursuing their  
3 business, and eventually made a construction loan to  
4 the Rose Law Firm.

5 Q Yes, sir. Now, you mentioned the prestige  
6 banking program.

7 A Yes.

8 Q I wonder if you could tell us a little more  
9 of the details about that.

10 A I mentioned that in the context that a  
11 number of unsecured loans to individuals was not that  
12 unusual. Now, bank regulatory policy and directives,  
13 both FDIC and eventually the Federal Reserve, the  
14 Comptroller of the Currency, all of that unsecured  
15 credits became more closely scrutinized and  
16 regulated, and as a result, less unsecured loans were  
17 made generally and specifically throughout banking.

18 But at that time, an unsecured personal  
19 loan was not necessarily an unusual transaction.

20 Q My recollection is those changes in bank  
21 regulation came later in the 1980s?

22 A That's my recollection, too, although I

1 would remind you, for the record, I was not a loan  
2 officer, and did not routinely keep comprehensively  
3 abreast of those kinds of loan directives.

4 Q Let me go to the conversation you had with  
5 Mr. Clinton at which time you learned that he was  
6 interested in buying property on the White River.

7 A Yes.

8 Q Did he ask you to try and acquire the loan  
9 on his behalf?

10 A No. He raised this possibility -- my  
11 memory was that we were in a car on a weekend and I  
12 was working -- I was traveling with him on a campaign  
13 itinerary on the weekend -- which I would spell the  
14 people in his gubernatorial campaign by working  
15 weekends. And my memory was we were in a car the  
16 first time that this came up, and I -- I said well,  
17 if you and Mrs. Clinton decide to buy a place on  
18 White River, I'm sure that that's something that we  
19 would want a chance to see if we could finance it for  
20 you.

21 Q So he didn't come to you and say I need a  
22 loan, you help me out?

1 A No, we were -- we were working -- we were  
2 working at the time. We were doing something else  
3 and this was in the course of the conversation.

4 I routinely asked customers of the bank  
5 what their needs were, banking needs were.

6 Q And why was that?

7 A As part of -- it is not only getting  
8 business, it is retaining banking business.

9 Q I think you mentioned that the lending  
10 portion of the banking business was probably the most  
11 profitable for you?

12 A Of course. During that era, that was  
13 the -- well, for non-money center banks, and loans,  
14 the lending portfolio was the largest producer of  
15 revenue for our bank, and that would be generally  
16 true of most banks --

17 Q Okay.

18 A -- during that era.

19 Q Was there --

20 A We didn't deal in foreign currency like  
21 many of the New York banks do.

22 Q Was there any mention during that

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1 conversation of a need to have you seek the loan on  
2 the behalf of Mr. Clinton and Mr. McDougal because  
3 there was a concern that Mr. Denton would not grant  
4 the loan on his own accord?

5 A I missed the first part of your question.  
6 I'm sorry.

7 Q I will repeat it for you.

8 A All right.

9 Q Did Mr. Clinton express a desire for you,  
10 to seek the loan on his behalf in an effort to avoid  
11 having to go directly to Mr. Denton to seek the loan?

12 A No. Mr. Clinton and Mr. Denton may or may  
13 not have met each other at the time we had this  
14 discussion. My response would be to say I don't -- I  
15 don't make the loans. I will get you in contact with  
16 the people at the bank who do make loans.

17 Q Was it your sense that this was an effort  
18 to try and circumvent Mr. Denton in any way?

19 A Not at all.

20 Q And do you believe that you followed proper  
21 banking procedures in soliciting Mr. Clinton's  
22 business and then informing Mr. Denton of



1 Mr. Clinton's desire to have a loan?

2 A Yes, sir. In fact, we had a motto: There  
3 is no business in this bank that somebody here hasn't  
4 asked for. "Ask for the business" was a routine  
5 stock motto that we had, and I don't know of any  
6 place that or -- many banks remind their officers to  
7 ask for the business, which I did routinely with many  
8 customers.

9 Q Are you aware of anything illegal or  
10 unethical in connection with this \$20,000 loan to  
11 Mr. Clinton or Mr. McDougal?

12 A No, sir. But I am not familiar with all --  
13 I am not familiar with all of Mr. Denton's  
14 activities.

15 MR. IVEY: We need to go off the record  
16 just a second for the court reporter.

17 (Discussion off the record.)

18 BY MR. IVEY:

19 Q I just had a couple of additional questions  
20 to ask you.

21 A Who is talking to me now?

22 Q Still Glenn Ivey.

1 A Okay.

2 Q With respect to the branching issue?

3 A Yes.

4 Q I guess the thrust of questions that you  
5 were asked earlier was to try and find out if there  
6 was any type of quid pro quo with respect to any --  
7 the governor's support of branching legislation. Are  
8 you aware of any type of quid pro quo, either a loan  
9 or money or campaign funds or anything of the sort  
10 that was offered to Mr. Clinton or demanded by  
11 Mr. Clinton in exchange for the signing of this  
12 branching legislation?

13 A None whatsoever.

14 MR. IVEY: That's all I have at this time.

15 EXAMINATION

16 BY MR. BARTOLOMUCCI:

17 Q This is Chris again. I have a couple of  
18 fast questions. We will be done very soon. With  
19 respect to the questions I asked you about whether  
20 the White House approached you about speaking to  
21 Mrs. Schaffer?

22 A Yes.

1 Q And you said no; does that answer also hold  
2 for Archie Schaffer?

3 A Yes.

4 Q So no one at the White House ever asked you  
5 to talk to Archie Schaffer?

6 A Either place. Mrs. Schaffer is very  
7 capable of speaking for herself, as you already  
8 know.

9 Q Now, in the conversations that you have had  
10 with Mrs. Schaffer about the preferred stock matter?

11 A Yes.

12 Q Did it ever come up that -- the possibility  
13 that she would hold a press conference on the  
14 subject?

15 A No, not -- I was aware that -- after the  
16 New York Times article had appeared I was aware that  
17 Mrs. Schaffer and Mr. Schaffer had tried, on a number  
18 of occasions, to get the record printed, into the  
19 public domain, but no, I don't know about any press  
20 conference so-called. I knew that they -- that she  
21 was being dogged and stalked by various members of  
22 the press, including one -- now Senate staff members,

---

1 Mr. Bossie, I think his name is.

2 Q You don't recall any discussion about the  
3 possibility of a press conference?

4 A No. I was aware that they were taking a  
5 number of press calls, and that they were trying to  
6 get some written material to the press.

7 Q Now, about the \$20,000 loan, did -- when  
8 you talked to Bill Clinton about it, did he indicate  
9 that he wanted this to be an unsecured loan?

10 A No.

11 Q Did you tell him --

12 A The terms of the loan were -- only the  
13 amount, an estimated amount, and what it was for were  
14 the only things that we discussed. I don't --

15 Q So, you didn't discuss with Bill Clinton  
16 whether the loan would be secured or not?

17 A No.

18 Q When you were at the bank, and you talked  
19 to Mr. Denton, did you tell him the loan was to be  
20 unsecured?

21 A No. I wouldn't have presented to  
22 Mr. Denton how the loan should be structured.

1       Q    So you don't have any idea how it came  
2 about that the loan was unsecured?

3       A    No.

4       MR. BARTOLOMUCCI: That's all I have for  
5 you.

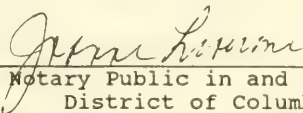
6       THE WITNESS: All right.

7       MR. IVEY: Thank you very much, sir.

8       (Whereupon, at 11:25 a.m., the deposition  
9 was concluded.)

10  
11 -----  
12                   PAUL C. BERRY  
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I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

JULY 31, 2000





**DEPOSITION OF BRUCE A. ERICSON  
IN RE: S. RES. 120**

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**VOLUME I**

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**FRIDAY, MAY 10, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of BRUCE A. ERICSON, called for examination pursuant to notice of deposition, at 10:40 a.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.  
Majority Chief Counsel  
ALICE S. FISHER, Esq.  
Majority Deputy Special Counsel  
LANCE COLE, Esq.  
Minority Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

ROBERT A. GUTKIN, Esq.  
Pillsbury Madison & Sutro, L.L.P.  
1050 Connecticut Avenue, NW  
Washington, DC 20036  
On behalf of the Deponent.

JAMES J. IGO, Esq.  
Federal Deposit Insurance Corporation  
550 Seventeenth Street, NW  
Washington, DC 20429  
On behalf of the Federal Deposit Insurance Corporation.

ALSO PRESENT: DAVID M. LUNA

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## P R O C E E D I N G S

MR. GIUFFRA: Good morning, Mr. Ericson, my name is Robert Giuffra. I am the chief counsel of the Senate Banking Committee. To my left is Lance Cole, who is Minority deputy special counsel.

This is a deposition that is being conducted pursuant to Senate Resolution 120. This resolution establishes a Special Committee administered by the Banking Committee to investigate Whitewater Development Corporation, Madison Guaranty Savings & Loan Association and other related matters.

The procedure for the conduct of depositions is set forth within the Resolution. I see you have a right under the Resolution to be represented by counsel. I see you have chosen to do so. If counsel would state an appearance now for the record.

MR. GUTKIN: Robert Gutkin, attorney for Mr. Ericson.

MR. GIUFFRA: Under our Resolution, objections to the form of questions can be noted for

4

the record. If there is a question about scope, that can be taken up with the Chairman during the course of the deposition and he may rule on it.

The procedure today is I will ask you a series of questions and then Mr. Cole will ask you a series of questions.

You understand you will be testifying under oath?

THE WITNESS: Yes, I do understand that.

MR. GIUFFRA: The stenographer will prepare a record of the questions and answers. The deposition will be treated as Committee confidential until the hearings. Prior to the hearings, you will be given an opportunity to review your transcript at the Senate or four days before you are called to testify. I believe that's right.

MR. COLE: I also noted that we have been accommodating out-of-town witnesses by sending them copies of their transcript where it is not convenient for them to come here.

MR. GIUFFRA: You will get that. Is it four days in advance?



1 MR. COLE: Yes.

2 MR. GIUFFRA: To my left is Alice Fisher,  
3 deputy special counsel for the Majority. She will be  
4 attending some portion of today's deposition.

5 Do you have any questions?

6 THE WITNESS: No.

7 MR. GIUFFRA: Does counsel have any  
8 questions?

9 MR. GUTKIN: No.

10 MR. GIUFFRA: Please swear in the witness.  
11 Whereupon,

12 BRUCE A. ERICSON

13 was called as a witness and, having first been duly  
14 sworn, was examined and testified as follows:

15 EXAMINATION

16 BY MR. GIUFFRA:

17 Q Mr. Ericson, to sort of speed this process  
18 up, could you possibly send the Committee a copy of  
19 your resume, if you have one.

20 A Sure.

21 Q If we could get that possibly by Monday.  
22 Is that doable?

1 MR. GUTKIN: No problem.

2 THE WITNESS: I could fax it to you on  
3 Monday.

4 MR. GIUFFRA: That will save us a little  
5 time.

6 BY MR. GIUFFRA:

7 Q Please state your name for the record.

8 A Bruce Alan Ericson.

9 Q Now, Mr. Ericson, were you the primary  
10 attorney at the Pillsbury firm responsible for  
11 conducting the litigation analysis that was conducted  
12 in connection with whether the RTC could bring a  
13 civil action in connection with Madison Guaranty and  
14 Whitewater Development Corporation?

15 A I wouldn't say so, no.

16 Q Who was the primary attorney?

17 A I think you have to break it down. It  
18 depends on the subject. I may have had primary  
19 responsibility for certain areas, but I certainly  
20 didn't for other areas.

21 Q Were you the billing partner?

22 A Yes.

1 Q Did you oversee the activities -- strike  
2 that.

3 Pillsbury examined a number of areas for  
4 the RTC; correct?

5 A True.

6 Q They would be -- the Rose Law Firm would be  
7 one area; right?

8 A True.

9 Q Whitewater Development Corporation would be  
10 another area; right?

11 A True.

12 Q Madison Guaranty would be another area?

13 A I wouldn't describe Madison Guaranty as an  
14 area, because everything had to be related to Madison  
15 Guaranty or we wouldn't have had an interest in it.  
16 So I wouldn't --

17 Q Why don't you describe what were the areas  
18 you looked into for the RTC.

19 A I'm not sure I will remember them all, but  
20 they are basically reflected in our various reports.  
21 The Rose Law Firm you have mentioned. Whitewater, we  
22 looked at a number of real estate projects of which

1 the Castle Grande project, 1308 Main Street in Little  
2 Rock were the primary ones. We looked at an  
3 accounting malpractice claim or a potential  
4 accounting malpractice claim involving Frost &  
5 Company.

6 Those are the principal things that come to  
7 mind. I may be overlooking something.

8 Q You have identified five areas; correct?

9 A Have I? I didn't keep count.

10 Q Who was responsible for the Rose --

11 A I did most of the work on Rose.

12 Q You were. If we wanted to know who would  
13 be primarily responsible, it would be you?

14 A Yes.

15 Q Whitewater?

16 A I would be primarily responsible.

17 Q Castle Grande?

18 A No, I would not have been.

19 Q Who would have been primarily responsible  
20 for that?

21 A My partner, Chuck Patterson.

22 Q Did you review Mr. Patterson's work in

1 connection with Castle Grande?

2 A Yes. Not in great detail but yes, I  
3 reviewed it. And he reviewed my work and the areas I  
4 worked on. You would have to ask him in what detail  
5 he reviewed it.

6 Q And 1308 Main Street?

7 A Chuck Patterson.

8 Q And the accounting malpractice?

9 A That was divided three ways, really. There  
10 were some legal conflict-of-interest issues that were  
11 principally handled by my partner, Robert Westberg.  
12 Another partner of mine, Parker Maddux, and I looked  
13 at the conduct of litigation against Frost &  
14 Company. So it was really split about three ways.

15 Q In terms of the overall representation, was  
16 there a member of the Pillsbury firm who was in  
17 charge?

18 A Yes.

19 Q Who was that?

20 A Chuck Patterson.

21 Q Is he senior to you at the firm?

22 A Oh, yes.

---

10

1 Q You were the billing partner?

2 A That's right.

3 Q Who was the partner at the Pillsbury firm  
4 who billed the most time to -- let's just call this  
5 the RTC-Madison project.

6 A I'm not sure. It may well have been me,  
7 but I'm not sure of that.

8 Q Do you know how much time you billed in  
9 hours to this project?

10 A No, I don't.

11 Q Do you know how much fees the Pillsbury  
12 firm has charged to the RTC for its work in  
13 connection with the RTC-Madison project?

14 A I can tell you approximately.

15 Q Okay.

16 A Approximately 1.9 million.

17 Q Is that fees billed or fees collected?

18 A It is fees billed. It is not fees  
19 collected.

20 Q There have been news reports where people  
21 have bandied about the number 4 million. Do you know  
22 where that number comes from?

1 A No.

2 Q So that is incorrect?

3 A I don't know what it purports to be. If it  
4 is supposed to be a measure of our fees, it is wildly  
5 incorrect. If it is something else, I don't know.

6 MR. COLE: Mr. Ericson, did the 1.9 million  
7 number you gave us include the work of the  
8 consultants?

9 THE WITNESS: No. It is just our fees.

10 MR. COLE: Only the Pillsbury firm's fees?

11 THE WITNESS: That's right.

12 MR. COLE: That didn't include other work  
13 and costs associated with it.

14 THE WITNESS: It does not include our  
15 disbursements or consultants. You said "fees," so I  
16 took it as fees.

17 MR. COLE: I wanted to make sure we had an  
18 understanding what we were talking about here.

19 BY MR. GIUFFRA:

20 Q How much were disbursements, approximately?

21 A Our disbursements were somewhere between  
22 200 and 300,000. I don't remember any more precisely

---

12

1 than that.

2 Q How much were your fees? You hired a  
3 consulting firm to assist you in connection with this  
4 project?

5 A Yes.

6 Q Who was the consulting firm?

7 A Principally Tucker Allen, Incorporated.

8 Q Tucker Allen is a financial analysis firm?

9 A It is forensic accountants.

10 Q How much did they charge?

11 A On the order of 1.2 million.

12 Q When you said Mr. Patterson was in charge,  
13 what did you mean by that?

14 A In our firm, we have what is called a  
15 "managing partner" for each matter. He was the  
16 designated managing partner for the matter. He had  
17 overall charge of the matter.

18 Q But you were the billing partner?

19 A That's right.

20 Q Now, there is a man named Jay Stephens who  
21 is a partner at your firm?

22 A Yes.



1 Q He is a former district attorney for the  
2 District of Columbia; correct?

3 A That's my understanding.

4 Q What was his role in connection with this  
5 Madison project?

6 A He worked on it in the early stages. As  
7 time went by, he did less work.

8 Q What was the work that he performed in the  
9 early stages on this Madison project for the RTC?

10 A I didn't directly sort of supervise or  
11 oversee that work, so I can give you only an  
12 approximate sort of answer. But he did some work in  
13 connection with a petition under Rule 6(e) of the  
14 Federal Rules of Criminal Procedure. He was involved  
15 generally in the early stages of the investigation,  
16 when we were all in sort of a hurried fashion looking  
17 at documents and files and trying to just get a  
18 handle on the project. He was involved in that.

19 He did some work with respect to  
20 consultants and possible experts. I think he also  
21 did some work with respect to the issuance and  
22 enforcement of subpoenas.

1 Q Mr. Stephens was not the managing partner  
2 on this project; right?

3 A That's right.

4 Q He was not the billing partner on this  
5 project?

6 A That's right.

7 Q There had been reports in the media where  
8 people have called this Jay Stephens analysis or the  
9 Jay Stephens report; is that correct?

10 A I would regard that as inaccurate.

11 Q Why would you regard those public  
12 statements as inaccurate?

13 A That doesn't reflect what happened.

14 Q Now, did Mr. Stephens draft the report you  
15 did related to Whitewater?

16 A Well, there are two reports related to  
17 Whitewater. But the answer with respect to both is  
18 no, he did not draft them. I was the principal  
19 draftsman for both of those reports. That is not  
20 to say that a lot of other people didn't contribute.  
21 They did, but he certainly was not the principal  
22 draftsman.

1 Q Did he draft any part of that report?

2 A No.

3 Q Did he provide comments in connection with  
4 either report?

5 A He provided some comments to me orally in  
6 connection with the first report.

7 MR. GIUFFRA: Off the record.

8 (Discussion off the record.)

9 BY MR. GIUFFRA:

10 Q You mentioned that there were two reports  
11 that you did related to Whitewater. Could you just  
12 state for the record what those reports were and when  
13 the dates were?

14 A There is a preliminary report dated in  
15 April 1995, I think April 24. There is a  
16 supplemental report dated December 1995. I forget  
17 the exact date.

18 Q December 1995 is the supplemental report?

19 A Right.

20 Q The preliminary report again?

21 A April.

22 Q That's '95?

1 A Yes, both '95.

2 Q Stephens did not review the supplemental  
3 report?

4 A To the best of my recollection, he did not  
5 review the supplemental report.

6 Q He reviewed a draft of the preliminary  
7 April '95 report?

8 A He reviewed one or more early drafts of the  
9 April 1995 report.

10 Q And he provided some comments to you?

11 A Yes.

12 Q Do you recall approximately how much time  
13 he spent providing those comments to you?

14 A About an hour.

15 Q So you had about a one-hour conversation  
16 with Mr. Stephens?

17 A Yes.

18 Q Do you recall what Mr. Stephens's comments  
19 were to you in connection with the April '95 report?

20 A No, not in any detail. As I recall the  
21 conversation, a lot of it wasn't really focused on  
22 the text of the report. It was more just sort of a

1 general discussion of the status of the investigation  
2 and where do we go from here and things like that.

3 He certainly -- there were no sort of  
4 textual kinds of let's look at page such-and-such,  
5 what about this line. There was nothing like that.  
6 It was more sort of general impressions.

7 Q Do you recall anything more about the  
8 general impressions that Mr. Stephens gave you --  
9 strike that.

10 With respect to the substance of the  
11 report, did Mr. Stephens communicate any comments to  
12 you?

13 A No, not in the sense of substance. Let me  
14 answer this way. He didn't say well, I agree or  
15 disagree with any point of analysis or anything like  
16 that. There was some discussion of style. As I say,  
17 there was some discussion of --

18 Q Let's focus on style. What did he say  
19 about style?

20 A The only thing I remember is he said that  
21 he found in my draft the same sense of humor he finds  
22 when he just talks to me.

1 MR. COLE: Sense of humor, to be avoided in  
2 all legal writing.

3 THE WITNESS: I don't know how to read  
4 that.

5 BY MR. GIUFFRA:

6 Q With regard to the style of the report, he  
7 didn't make any comments that were incorporated in  
8 the report; is that correct?

9 A I don't think anything he said ended up  
10 affecting the report, really. It was sort of a more  
11 general discussion of where we are and where are we  
12 going.

13 Q To say that he really commented on the  
14 first report would, in fact, be incorrect because, in  
15 fact, all he did was basically ask you where you were  
16 going in terms of the investigation and provide a few  
17 comments that the style was similar to what he had  
18 seen with regard to your sense of humor?

19 A I don't want to quibble with you. We sat  
20 there for an hour and talked about various things  
21 related to the report and the investigation in  
22 general. He read the report and we chatted about

1 it. To that extent he gave comments, they certainly  
2 weren't in any detail. I wouldn't describe them as  
3 substantive.

4 Q He did not give you substantive comments on  
5 the report?

6 A I think that's fair.

7 Q He did not give you any -- he didn't make  
8 any suggestions in terms of how the report should be  
9 written in terms of the actual words that were used?

10 A No, he didn't, that's right.

11 Q He did not give you a marked-up version --

12 A He never gave me a marked-up version of  
13 anything.

14 Q -- of your report. Did he tell you to take  
15 anything out of the report?

16 A No.

17 Q Did he tell you to add anything to the  
18 report?

19 A No.

20 Q Did he tell you he agreed with the report?

21 A No, he didn't say he agreed or disagreed.

22 Q Did he in any way adopt the report as his

1 own?

2 A No.

3 Q Had Mr. Stephens done any deposition work  
4 in connection with this matter?

5 A I don't think so.

6 Q As far as you know, he never took a single  
7 deposition?

8 A I don't think so. Perhaps I'm overlooking  
9 something. I don't recall him having interviewed or  
10 deposited anybody.

11 Q Do you know if he ever reviewed any  
12 interviews or deposition notes?

13 A I don't know.

14 Q Do you think he did?

15 A I don't know.

16 Q Did he participate in any meetings where  
17 the results of your investigation were discussed,  
18 other than this meeting he had with you for an hour?

19 A I'm fairly confident that he must have in  
20 the early stages. "Results" has a connotation of  
21 sort of latter stage, conclusion and so on.

22 Q In the early stage, you were trying to plan



1 the investigation --

2 A Just to give you a little context --

3 Q To speed the process up, that's fine.

4 A -- we got the assignment in early February  
5 '94. It was before the statute of limitations was  
6 extended. At the time, the deadline was February  
7 28. We had roughly three weeks to do something. The  
8 first several weeks were rather rushed for that  
9 reason, at least until the statute was extended,  
10 which as I recall, happened the middle part of  
11 February.

12 Essentially, what happened is we sent  
13 people to Kansas City and we sent people to  
14 Washington and were just poring through a lot of  
15 documents and trying to get a feel for what was  
16 involved in a real hurry because it was possible we  
17 were going to have to recommend or not recommend the  
18 filing of a lawsuit, and if we recommended the filing  
19 of a lawsuit, draft a complaint and get it filed by  
20 the 28th of February.

21 That was sort of a frenzied period in which  
22 we were all spending long hours looking at documents

---

22

1 and trying to learn this thing as fast as we could.

2 Once the statute was extended, things  
3 changed. We obviously then had more time. The  
4 statute was extended to December 31, 1995. Then we  
5 began to step back a little more after the statute  
6 was extended and think what's a more logical and  
7 reasonable way to go at this project, how should we  
8 divide up the work, who should do what and what is  
9 worth pursuing and what is not worth pursuing.

10 Those discussions went on for a couple  
11 months on and off. I'm quite sure that Mr. Stephens  
12 participated in a number of those sorts of  
13 discussions in March, April, that time frame of  
14 1994.

15 Q Did he participate in any of the document  
16 review that was conducted in the February of '94  
17 period?

18 A I'm pretty sure he did, but I can't tell  
19 you what documents he reviewed.

20 Q It is your best estimate he probably  
21 participated in some of the national planning work in  
22 the March-April period?

1 A Yes.

2 Q After that period, did he participate much  
3 more in the project?

4 A In a declining sort of way, he continued to  
5 work on the project throughout at least part of the  
6 rest of 1994. I think his work on it pretty much  
7 came to an end by the fall of 1994.

8 Q Now, why did Mr. Stephens's work on this  
9 project come to an end in the fall of 1994?

10 A I don't really know. You would have to ask  
11 Chuck Patterson.

12 Q Did you have any discussions with  
13 Mr. Patterson or Mr. Stephens in which either of  
14 those two gentlemen indicated why Mr. Stephens's  
15 participation in this matter would deteriorate after  
16 the fall of 1994?

17 A I'm sorry. What was the verb in your  
18 question?

19 Q I will restate the question.

20 MR. COLE: "Deteriorate" might not be  
21 Mr. Stephens's favorite way to characterize his  
22 work.

1 BY MR. GIUFFRA:

2 Q Chuck Patterson, is he the managing partner  
3 of the entire firm?

4 A No.

5 Q Is he the head of any group in the firm?

6 A Yes.

7 Q Is he the head of the litigation group?

8 A I will have to give you more detail than  
9 you want. I may have to ask my counsel how many  
10 litigation groups we have. It seems to change all  
11 the time. We have three or four or five right now.  
12 He is currently the head of one of those. He is also  
13 the head of what is called a litigation practice  
14 committee, which is sort of a committee --

15 Q He is head of the litigation group?

16 A One of the groups and the committee that  
17 supposedly oversees the rest of the groups.

18 Q The work that was done in connection with  
19 this project for the RTC was done primarily in  
20 San Francisco?

21 A I wouldn't say that. I mean, some of the  
22 work was done in San Francisco. Some was done in

1 Los Angeles and some was done in Washington.

2 Q Is there any way, if you were to divide up  
3 where most of the work was done in terms of  
4 percentages, would you say 80 percent of the work was  
5 done in San Francisco, 10 percent in L.A. and 10  
6 percent in Washington?

7 A Well, I couldn't give you percentages that  
8 would be anything other than a wild guess. I would  
9 say, as between San Francisco and Los Angeles, it  
10 would be fairly evenly split. Maybe more  
11 Los Angeles. I'm not sure.

12 Q Who did the work in Los Angeles?

13 A Primarily Chuck Patterson, Kent Goss,  
14 Michael Finnegan, Deborah Harris, who is a paralegal,  
15 and others, but they would be the primary people.

16 Q Patterson is located in Los Angeles?

17 A Yes, all the people I listed.

18 Q In San Francisco you had?

19 A Me, Ed Kolto, Tom Morgan, who is a  
20 paralegal. We used a number of other paralegals and  
21 paralegal clerks in San Francisco, a number of whom  
22 worked with Tucker Allen.

1 Q Tucker Allen is located where?

2 A They are in about 10 cities. The people  
3 who worked in this project are principally located in  
4 Seattle. While they were working on the project,  
5 they spent a lot of time in San Francisco.

6 Q Did anyone in the Washington office do work  
7 on the project other than what you indicated  
8 Mr. Stephens's role was?

9 A Several associates worked on the project  
10 from time to time, not to any great extent, though.  
11 A number of paralegals in the Washington office  
12 worked on the project.

13 Q Gathering documents --

14 A Yes.

15 Q -- from the RTC's files here in Washington?

16 A Yes.

17 Q Was there any other partner, other than  
18 Mr. Stephens who did any work out of Washington?

19 A I can't say that nobody ever recorded a  
20 quarter hour but not any substantial amount of work.

21 Q You indicated that the amount of work that  
22 Mr. Stephens did on this declined after the fall of

1 '94 or about in the fall of '94. Do you know why it  
2 would have declined?

3 A No. As I said, you have to ask  
4 Mr. Patterson.

5 Q Did you ever discuss with Mr. Patterson why  
6 Mr. Stephens wasn't doing any more work on this?

7 A Not really in any detail. Mr. Patterson --  
8 there came a point late spring/early summer,  
9 something like that, when we were finally going to  
10 divide up the work and Mr. Patterson told me what the  
11 division of work was going to be, and I kind of  
12 focused on what I was going to do and so on, but  
13 other than that, I don't really recall any  
14 discussion.

15 Q Now, are you aware of statements made by a  
16 Presidential assistant by the name of George  
17 Stephanopoulos about Mr. Stephens --

18 A I have read some of them in the newspaper.  
19 That would be my only knowledge.

20 Q -- in which he indicated that he was  
21 concerned about the fact that Mr. Stephens was a  
22 Republican appointee and that he was heading this

1 inquiry on behalf of the RTC into Madison?

2 A I have seen statements somewhat like that  
3 in the newspaper, yes.

4 Q In fact, Mr. Stephanopoulos later testified  
5 before the Senate Banking Committee about a  
6 conversation he had with a Treasury official about  
7 his concern about Mr. Stephens. Do you recall seeing  
8 that in the newspaper?

9 A I don't really recall. I haven't read  
10 Stephanopoulos's testimony. I can't say I haven't  
11 seen an article to that effect. I remember, I think  
12 it was '94, there was a flurry of articles about  
13 Stephanopoulos and him being upset and so on. Other  
14 than for the amusement value it provided, I didn't  
15 pay much attention to it.

16 Q Did you ever discuss with anyone at the RTC  
17 whether Mr. Stephens was the appropriate person to  
18 work on this project?

19 A No.

20 Q Did you ever discuss with anyone at the RTC  
21 Stephanopoulos's statements about whether or not  
22 Mr. Stephens was the appropriate person to work on



1 this project?

2 A No.

3 Q Did anyone from the RTC ever direct anyone  
4 at Pillsbury, as far as you know, that Stephens  
5 should or should not work on this project?

6 A Certainly no one ever said any such thing  
7 to me. You would have to ask Patterson what, if  
8 anything, was said to him.

9 Q Did Patterson ever indicate to you that  
10 anyone at the RTC ever said anything to him about  
11 whether Stephens should work on this project?

12 A Patterson indicated to me that he had some  
13 sort of discussion with someone at the RTC about who  
14 would do what and that that discussion included  
15 something about Stephens. But Patterson is not one  
16 to give one a lot of details. He didn't provide me  
17 with any details.

18 Q Did he say anything more about what he had  
19 heard from the RTC about the role of Stephens,  
20 anything at all?

21 A I'm thinking here.

22 (Pause.)

1 He wasn't specific about who he talked to  
2 or any specifics of the conversation, but he said  
3 something indicating that the general counsel --

4 Q Of the RTC --

5 A Of the RTC, yes.

6 Q Do you know who that was at the time?

7 A Ellen Kulka had disliked something  
8 Mr. Stephens had said in a meeting or something like  
9 that. I don't know what it was that was said or  
10 anything more than that. It was not a meeting I had  
11 attended.

12 Q Apparently, there had been a meeting  
13 between Ms. Kulka, Mr. Stephens, at some point in  
14 connection with this project; is that right?

15 A I think so, yes.

16 Q Do you know if Mr. Patterson attended the  
17 meeting?

18 A I don't know.

19 Q Did Mr. Patterson say anything more to you  
20 about what Mr. Stephens had said at the meeting that  
21 had upset Ms. Kulka?

22 A No. No, he didn't. Just that they had

1 disagreed about something, but I don't know what it  
2 was.

3 Q It was your understanding from  
4 Mr. Patterson that Kulka had disagreed with  
5 Mr. Stephens about something at a meeting that was  
6 held --

7 A Yes.

8 Q -- in connection with this project? Do you  
9 have any understanding as to whether Ms. Kulka asked  
10 Mr. Patterson or anyone at Pillsbury that  
11 Mr. Stephens should not work on the project or should  
12 not work on particular parts of the project?

13 A No, I don't have any understanding like  
14 that.

15 Q Did Mr. Patterson say anything more to you  
16 about any action that the firm was going to be taking  
17 with regard to the extent of Stephens's work based on  
18 what Kulka said?

19 A No. What he did was he just said look, how  
20 about if we divide the work this way, how about if  
21 you take Whitewater and I will take Castle Grande and  
22 1308 Main Street and you work with the accountants.

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1 I said fine, and I probably made a joke or two about  
2 how he had the more promising-looking claims.

3 Q And also that you were going to be handling  
4 the Rose firm?

5 A No. That was not discussed at that point,  
6 because at that time it wasn't clear that we were  
7 going to do anything with respect to the Rose firm.  
8 That came along later.

9 Q Did Mr. Patterson indicate to you where  
10 Mr. Stephens would fit in in terms of  
11 responsibilities on this project?

12 A If he did say anything, I don't remember  
13 what it was. I remember the division between Chuck  
14 and myself, and I was kind of focused on what I was  
15 going to be doing. That's about all I remember.

16 Q Was Stephens given any responsibility with  
17 regard to the project by Mr. Patterson, as far as you  
18 know?

19 A I don't recall him being given any  
20 responsibility. At the time, he was working on  
21 certain things, so as far as I know, he continued to  
22 work on those things; for instance, the 6(e) petition

1 and some subpoenas and so on. I don't recall any  
2 discussion.

3 Q Do you recall any more Mr. Stephens had  
4 done for this project of a substantive nature? The  
5 6(e) petition, some subpoenas, can you think of  
6 anything else?

7 A When you asked the question before, I think  
8 I listed three or four things. I don't recall  
9 anything beyond the ones I previously testified to.

10 Q It would be your testimony that you have no  
11 understanding from anybody as to whether the RTC  
12 directed Stephens to have a role one way or the other  
13 with regard to this project?

14 A Yes. All I know is what I told you.

15 Q The full extent of what you know is that  
16 there was a meeting, Ellen Kulka expressed some  
17 upsetment with regard -- or disagreement with regard  
18 to what Mr. Stephens had said at the meeting and that  
19 this was reported to you by Mr. Patterson?

20 A Disagreement. I don't think "upset" is the  
21 word. Again, perhaps I shouldn't volunteer, but I  
22 don't know if I knew it at the time or knew later but

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1 Ms. Kulka is a fairly sensitive individual, sensitive  
2 with respect to sort of issues of protocol, if you  
3 will, and presenting something to her or whatever is  
4 a bit like walking on eggshells. I think anything I  
5 heard about disagreement or whatever I pretty much  
6 brushed off as inconsequential.

7 Q Do you have any understanding as to why  
8 Mr. Stephens did not do more work on this project  
9 after the fall of 1994?

10 A No, not really, nothing beyond what I  
11 already told you.

12 Q You never discussed that subject with him?

13 A No.

14 Q Have you ever discussed with him the fact  
15 that at least publicly people have said this is the  
16 so-called Stephens report, these reports are the  
17 so-called Stephens reports?

18 A Once or twice we have kind of joshed about  
19 that, kind of kidded him, just kind of casual  
20 conversation.

21 Q Kidding about the fact that he is getting  
22 all the credit for doing these reports; right?

1 A If you want to call it credit, I mean  
2 sure. I might needle him a little bit or something  
3 about his name being associated with them when that  
4 is really not the case. But just extremely casual  
5 sort of banter, nothing of any substance.

6 Q The fact that everyone is saying it is the  
7 Stephens report when, in fact, it shouldn't be called  
8 the Stephens report because he was not the person  
9 involved in doing the work?

10 A Sort of you joke about the inaccuracies of  
11 what one sees in the press, that sort of thing.

12 Q Did he say anything to you about the fact  
13 that he was being associated with this report that he  
14 had little or nothing to do with?

15 A No, he really never said anything.

16 Q How did Pillsbury first get this project  
17 from the RTC?

18 A Well, to the best of my recollection, in  
19 late January or early February 1994, Chuck and I  
20 received separate calls, I think, from Mark  
21 Gabrellian inviting us to bid on the project, not  
22 told a lot about it other than it was an

1 investigation to look into possible PLS claims and  
2 that we ought to put together a proposal and send it  
3 in and that we, along with some other law firms,  
4 would be considered. I put together a proposal and I  
5 I'm pretty sure I showed it to Chuck -- I don't know  
6 if I showed it to anybody else -- and I sent it in.  
7 The next thing is I think I was home sick with a cold  
8 or flu or something in early February and I got a  
9 phone call at home and it was Mark Gabrellian telling  
10 me that we had been chosen.

11 Q Did you do an estimate as to how much you  
12 thought the project would cost?

13 A I don't know if the proposal mentioned any  
14 numbers. If it did, I'm reasonably confident that it  
15 was full of caveats and extremely hedged and in very  
16 vague terms because I frankly had no idea how much it  
17 would cost. I hadn't been provided with any  
18 information as to the number of possible witnesses,  
19 the volume of documents or anything else. So any --

20 Q How could you actually submit a bid if you  
21 didn't really know what the full extent of the  
22 project would be?



1       A    It is not a bid in the sense of a  
2 construction bid where you cost something out and  
3 provide a number. It is a typical RTC bid, at least  
4 the type I have always prepared, would be more when  
5 we discuss who you would put to work on the project  
6 and what your basic philosophy or plan of attack  
7 would be and that sort of thing. The dollars  
8 component, if any, would be extremely cursory.

9       MR. COLE: Would you specify in your bid or  
10 proposal the billing rates of the individuals  
11 involved so that there would be some sense of the  
12 cost based on that?

13       THE WITNESS: Yes. But in a sense, that  
14 was revealing nothing because we had a legal services  
15 agreement with the RTC that specified those billing  
16 rates. I was only telling them what they already  
17 knew.

18       BY MR. GIUFFRA:

19       Q    Was Mr. Stephens's name in the proposal?

20       A    Yes.

21       Q    What was the role that was envisioned for  
22 Mr. Stephens in the proposal?

1       A    As I recall it, Chuck Patterson and I and  
2 Jay Stephens were described as the three principal  
3 litigators that would work on the matter. It wasn't  
4 any more definitive than that.

5       Q    You have no recollection as to what the  
6 dollar number was that was put in the proposal?

7       A    I don't think there is anything specific.  
8 I think if I said anything, it was probably, like,  
9 this will cost hundreds and hundreds of thousands, or  
10 something like that. It depends on the time frame.  
11 I didn't have enough information to provide anything  
12 remotely specific. I am very reluctant to quote a  
13 figure when I don't have enough information because I  
14 have been burned on that before.

15       Q    In the initial bid, the three partners who  
16 were going to be the principal people working on this  
17 are Stephens, yourself and Patterson; right?

18       A    Three litigation partners who were going to  
19 work on this. I think I dropped the names of half a  
20 dozen other people in other areas of the firm,  
21 financial institutions, real estate, so on. I think  
22 I probably listed maybe as many as a dozen people in

1 the bid or the proposal. But the litigators  
2 mentioned, at least the litigation partners mentioned  
3 were Chuck Patterson, myself and Jay Stephens.

4 Q You have no other testimony to give the  
5 Committee as to why Mr. Stephens's role diminished  
6 over time with regard to this project?

7 A I think I have told you what I know.

8 Q Was there any discussion within the firm  
9 about publicity surrounding Mr. Stephanopoulos's  
10 comments and that perhaps being a precipitating cause  
11 with regard to the amount of work that Stephens would  
12 or wouldn't do on the project?

13 A Not that I was privy to. The only  
14 discussions I have ever had with people, other than  
15 people working on this project, about any aspect of  
16 the project have simply been to remind people that  
17 they don't talk to the press.

18 Q Never discussed with Mr. Patterson that  
19 perhaps it might be a better idea if Stephens did  
20 less work on the project because of what  
21 Stephanopoulos had said?

22 A Oh, no.

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1 Q Let me ask a question. As far as you know,  
2 has Mr. Patterson ever been active in partisan  
3 politics?

4 A He has mentioned to me that from time to  
5 time he has supported friends of his that were  
6 candidates for office and has contributed to them,  
7 but I don't know who those people were or what he  
8 means by "contributions."

9 Q Do you recall whether they were Democrats  
10 or Republicans?

11 A I don't recall who they were. I know he  
12 has one friend who is I think running for Senate who  
13 is a Democrat, but other than that, no, I don't know.

14 Q Have you ever participated in partisan  
15 politics?

16 A Only to a very modest degree.

17 Q To what extent would that be?

18 A In San Francisco, I am a member of  
19 something called -- let's see if I can get the name  
20 right -- something like "lawyers committee for better  
21 government" or something along those lines, which is  
22 a group of lawyers that generally support Republican

1 candidates. I haven't attended much in recent years  
2 but I sometimes go to their meetings. Myself, I have  
3 made a couple of contributions to candidates over the  
4 political years. I think the total amount of  
5 political contributions in my lifetime I think is  
6 under \$300. I am not what you call a heavy hitter.  
7 I am kind of cheap, frankly.

8 Q When you spoke to Mr. Gabrellian, did he  
9 indicate to you what the purpose of this project that  
10 he wanted you to bid on was?

11 A I don't remember anything specific he  
12 said. You mean the first time he called?

13 Q Yes.

14 A I don't remember anything specific. I just  
15 remember that we were being invited to bid on  
16 investigation and possible litigation of professional  
17 liability claims with respect to Madison Guaranty,  
18 and he would have mentioned that that is the shop  
19 associated with Whitewater. But I don't recall -- he  
20 probably said something else, but it is more than two  
21 years ago and I certainly don't remember what he  
22 said.

1 Q Once you got the project, what was your  
2 understanding --

3 A Let me add one thing. I think he must have  
4 provided some detail as to what he thought the nature  
5 of possible claims would be because, as I recall it,  
6 our proposal said at least a little something about  
7 what we understood the possible claims to be. I  
8 remember like land flips, for example, to be an  
9 issue.

10 I don't remember much beyond that. He must  
11 have said a little something, but what he said I  
12 don't remember.

13 Q Had you ever done similar projects for the  
14 RTC in the past?

15 A Yes.

16 Q Very, very briefly, can you just describe  
17 those projects.

18 A Sure. The principal case that I worked on  
19 for the RTC was some litigation in Arizona, a case  
20 called RTC versus Dean that grew out of the failure  
21 of Southwest Savings of Phoenix, Arizona. It was  
22 principally litigation as opposed to investigation.

1 We replaced another firm sort of at the end of the  
2 investigation. We pretty promptly drafted a  
3 complaint and filed suit and then went and litigated  
4 that matter.

5 Q When was that?

6 A We started working in August 1991, and the  
7 case settled spring of '94, I believe.

8 Q What was the dollar value of the  
9 settlement?

10 A \$15.3 million.

11 Q What were the fees billed by Pillsbury,  
12 including disbursements, roughly?

13 A I don't really remember. If you want me to  
14 take a semi-informed guess, I would say on the order  
15 of 2 to 3 million.

16 Beyond that, we had one other matter, the  
17 Walde case, that was here in the Washington, D.C.  
18 area that I worked on a little. I did the bid for  
19 it, helped bring it in and then worked on a little.  
20 I should mention that on the Arizona case, Dean,  
21 Chuck Patterson worked on that as well.

22 Q Your charge, at least as I understand it,

1 was you were trying to determine whether it was cost  
2 effective for the RTC to bring an action against the  
3 persons connected with either Whitewater, Madison or  
4 the Rose Law Firm; right?

5 A I'm not sure I would truncate it quite that  
6 way. I view it more as a two-step analysis. One,  
7 seeing are there valid claims that could be brought  
8 and then two, seeing whether those claims would be  
9 cost effective. But certainly the way you put it is  
10 the bottom line.

11 Q When you look at whether it is cost  
12 effective to bring a case, you look at the amount of  
13 money it is going to take to litigate the case, the  
14 probability of success and the amount of money you  
15 are going to recover at the end; right?

16 A Yes.

17 Q Are there any other factors you would  
18 consider?

19 A Well, subsumed in the last of the three  
20 points you mentioned is how much did the potential  
21 defendants have and can you collect the judgment if  
22 you get it.



1 Q One would be damages, two would be  
2 likelihood of success?

3 A Cost to prosecute the case.

4 Q Cost of prosecution would be three and then  
5 four would be the amount of money the defendants  
6 had.

7 Let's just talk with regard to the Rose Law  
8 Firm. Did you ever do an analysis at the beginning  
9 as to what the possible damages might be, the  
10 beginning of your analysis?

11 A Not at the beginning, no.

12 Q What was the earliest date upon which you  
13 would have done an analysis of the amount of damages  
14 that there might be?

15 MR. COLE: When you say "amount of  
16 damages," you are speaking of the damages that  
17 potentially could be recovered through claims against  
18 the Rose Law Firm?

19 MR. GIUFFRA: Correct.

20 MR. COLE: You would include all potential  
21 claims that Mr. Ericson would have been aware of at  
22 the time for all matters?

1 MR. GIUFFRA: Let's identify all possible  
2 damages for all claims.

3 BY MR. GIUFFRA:

4 Q If you can't do that, try something else.

5 A I never did any very fancy analysis of  
6 damages that might be recovered from the Rose Law  
7 Firm. You have listed them, your four points in that  
8 order, putting damages first. Typically, I think you  
9 would start with liability and analyze liability  
10 first and then get to damages and ability to collect  
11 and so on later. That is typically -- well, that is  
12 the way we handled this one.

13 Also with respect to this --

14 Q Wouldn't it be right that if there were --  
15 if the amount of damages potentially was small,  
16 whether it was liability or not, might be kind of  
17 irrelevant; right?

18 A Well, sure. If potentially recoverable  
19 damages is small, you might say we don't need to do  
20 anything further because it just isn't worth it.  
21 That is true, at least in the abstract, yes.

22 Q So when would have been the earliest time

1 you would have made any kind of judgment as to what  
2 possible damages there might be against the Rose Law  
3 Firm?

4 A I thought about it to some extent in  
5 connection with the drafting of the Rose firm reports  
6 the second half of '95. The work in general in the  
7 Rose firm came later rather than earlier in the  
8 project.

9 Q Do you recall what the amount of damages  
10 that might be recoverable, the estimate was?

11 A I really don't.

12 Q Can you give us an estimate of any sort?

13 A I think the largest number we ever thought  
14 of would be in connection with the Castle Grande  
15 project, and the argument there would be that if  
16 somehow it could be established that the Rose firm  
17 had some liability for the acquisition of the real  
18 estate, that you might be able to put together an  
19 argument that the firm would therefore be liable for  
20 all losses associated with the project, even aspects  
21 of the project with which the firm had no  
22 involvement.

1 If such an argument could be made, and I  
2 don't think I ever made a judgment as to whether that  
3 would work or not, then you would be looking at all  
4 the losses associated with Castle Grande.

5 We ourselves did not do an analysis of  
6 that. Rather, we used an analysis provided by RTC  
7 investigations. My best recollection is with  
8 prejudgment interest and other factors, that was on  
9 the order of \$4 million.

10 One thing I was going to say a moment ago  
11 and you, I'm sure, inadvertently cut me off, was that  
12 we didn't do a lot of damages work in general in this  
13 project. By and large, we used damages numbers  
14 provided by RTC investigations for our purposes.  
15 This Castle Grande is an example of that.

16 Q Your top number would have been 4 million  
17 for Castle Grande against the Rose Law Firm. Did you  
18 have other numbers that you came up with?

19 A No. That's the only one that sticks in my  
20 mind.

21 Q Let's again focus on Rose. Your  
22 examination of Rose, were you struck by the fact of

1 the amount of money that was at stake in terms of  
2 damages was relatively small?

3 A The beginning of the Rose work?

4 Q Yes.

5 A I would say no, with this caveat, that by  
6 the standards of what we had already seen, \$4 million  
7 is pretty good money for Madison Guaranty.

8 MR. COLE: When you say "by the standards  
9 of what you had already seen," are you referring to  
10 other matters that you had investigated through the  
11 course of this engagement?

12 THE WITNESS: Yes. I think my answer is a  
13 little obscure. Maybe I can explain it. When we  
14 first started working on this, the early phase,  
15 February 1994, as I have already indicated, it was  
16 kind of a hurried process of taking a quick look at  
17 everything in case we needed to make a quick  
18 judgment.

19 I certainly was struck early on by the fact  
20 that the numbers, in general, were very small  
21 compared to what I was used to.

22 BY MR. GIUFFRA:

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1 Q Your work with the RTC?

2 A Yes.

3 Q In the Arizona case, what was the top  
4 dollar figure you used?

5 A I think our complaint sought in excess of  
6 \$200 million.

7 Q And you settled it for 15?

8 A Yes, ability to pay being a big constraint  
9 there.

10 In that case, for example, we, or the  
11 people who did the investigation looked at, say, in  
12 excess of 75 questionable real estate loans, each  
13 over \$5 million, and we selected, say, the best of  
14 those, 14 loans or something, and put together a  
15 complaint praying for 200 million or over 200  
16 million. That's good money in anybody's league.

17 In contrast, when we started looking at  
18 Madison, we are seeing very few projects in which the  
19 potential damages were even a million dollars.  
20 Perhaps one living in California and used to  
21 California real estate prices gets jaded, but the  
22 numbers involved with the various loans and

1 investments involved in Madison Guaranty seemed, at  
2 least to me, to be very small numbers.

3 Q That would also obviously affect whether it  
4 would be cost effective to bring an action?

5 A Yes. I had that reaction early on in the  
6 engagement. By the time I turned to work on the Rose  
7 firm, which was a year later, that was old news. No,  
8 I didn't really react to any numbers associated with  
9 Rose.

10 Q With regard to Whitewater, did you ever  
11 draw a judgment as to what potential damages there  
12 might be there?

13 A I certainly ultimately did, yes.

14 Q What was that number?

15 A It is set forth in our report. I forget  
16 the exact number. But I think we traced some  
17 five-figure number as being --

18 Q \$50,000 or something?

19 A I remember there was an 80 and there was a  
20 30 or something. There was a five-figure number  
21 representing the maximum amount that possibly could  
22 be traced from Madison into Whitewater.

1 Q So under 100,000?

2 A Under a hundred, yes.

3 Q 4 million against the Rose Law Firm out of  
4 Castle Grande. Any other damage calculations stick  
5 in your memory?

6 A No. I mean, other than Castle Grande, the  
7 other sort of principal piece of work we looked at  
8 was the preferred stock work and the broker-dealer  
9 work. We didn't do any real damages analysis. All I  
10 remember thinking about that was that it would be  
11 very difficult to prove any damages because there  
12 never was an issuance of preferred stock. It just  
13 came to nothing.

14 Q When did you first learn that Rose had  
15 represented Madison in connection with Castle Grande?

16 A I don't know. It must have been sometime  
17 in the course of the investigation, but I don't --

18 Q When did you learn they had been involved  
19 in the acquisition of the property from IDC? Early  
20 in the investigation? Middle of the investigation?  
21 End of the investigation?

22 A I don't have any clear recollection. To



1 the best of my recollection, early on, say, March --

2 Q This would be '94?

3 A -- of '94, someone, not me, had reviewed  
4 some documents produced by the Rose Law Firm or some  
5 documents relating to the Rose Law Firm. I'm not  
6 sure if they were the ones produced by the firm --  
7 and had noted an invoice or something referring to  
8 IDC, and I was aware of that.

9 Q Did you focus on the Rose Law Firm and  
10 Castle Grande before or after the report issued by  
11 the RTC IG in, I believe it was August of '95?

12 A I certainly started to focus on it before  
13 then.

14 Q It is your belief that prior to August '95,  
15 there had been an invoice that had indicated that  
16 Rose had done some work on IDC that you had  
17 identified?

18 A Yes.

19 Q Was that in connection with the acquisition  
20 or in connection with some other matter?

21 A Well, to the best of my recollection, it  
22 was an invoice that included work related to the

1 acquisition and later work, the sewer work and the  
2 wet/dry issue as well.

3 Q With regard to Castle Grande, when did you  
4 start to take depositions of persons involved in that  
5 matter?

6 A When did I or when did we?

7 Q When did the firm.

8 A Spring of '94.

9 Q Who would you have deposed in the spring of  
10 '94 at Rose --

11 A At Rose?

12 Q -- related to Castle Grande?

13 A Was that your previous question as to  
14 Rose?

15 Q No. Let's go back. Who did you depose in  
16 the spring of '94 related to Castle Grande?

17 A I didn't do any of those interviews or  
18 depositions in the spring of '94, so I can't really  
19 tell you.

20 Q Well, Pillsbury.

21 A Pillsbury, then, I don't -- others did and  
22 I just don't remember the order. Let me explain that

1 a bit. I have already told you Patterson took for  
2 himself and his colleagues in Los Angeles the Castle  
3 Grande project and 1308 Main Street. He and Kent  
4 Goss and Mike Finnegan started spending time in  
5 Arkansas and interviewing or deposing a number of  
6 people starting in about April 1994. They ended up  
7 interviewing, I don't know, 20 or 30 people in that  
8 time frame, April, May, June of '94. Many, maybe  
9 most of those interviews were related to, or at least  
10 touched on Castle Grande. I don't think any of them  
11 were --

12 Q Did they interview Seth Ward?

13 A Very briefly, yes.

14 Q Do you recall approximately how long the  
15 interview took?

16 A I have no idea. I wasn't there. All I can  
17 tell you is Patterson did it, and it was not  
18 transcribed and his notes on the interview are  
19 extremely short and he told me it was kind of a  
20 worthless interview --

21 Q Why did he indicate it was worthless?

22 A -- because Seth Ward wasn't willing to say

1 very much.

2 Q He was obviously a critical witness with  
3 regard to Castle Grande?

4 A Certainly an important witness, yes.

5 Q And in that period, he had not -- did he  
6 speak to -- obviously he spoke to Jim McDougal;  
7 right?

8 A We never spoke to Jim McDougal.

9 Q You never spoke to Jim McDougal about  
10 anything?

11 A We attempted to take his deposition and he  
12 took the Fifth. Same with Susan.

13 Q You would agree, with regard to the work  
14 you did for the RTC, whether it would be Whitewater  
15 or Madison, Castle Grande, he would be a critical  
16 witness?

17 A Yes.

18 Q Probably the most critical witness, would  
19 you say?

20 A Yes.

21 Q You never spoke to him?

22 A We tried to take his deposition and he took

1 the Fifth.

2 Q Did you ever attempt to speak -- did anyone  
3 try to speak to Jim Guy Tucker back in the spring of  
4 '94?

5 A I have the impression we attempted to but  
6 you would have to ask Patterson about the details.

7 Q Was Pillsbury ever able to interview  
8 Mr. Jim Guy Tucker?

9 A I don't think so.

10 Q Back in the spring of '94, did you ever  
11 interview Mr. John Latham?

12 A We tried to but we were unable to.

13 Q Again, why were you unable to?

14 A Essentially the Independent Counsel would  
15 not permit it at that time.

16 Q You would agree that he would be an  
17 important witness?

18 A I think he would be a significant witness,  
19 yes.

20 Q And you would agree that Tucker would be a  
21 significant witness with regard to Castle Grande?

22 A Yes. For Latham, at least we had some

1 previous testimony, I believe, from the 1990 criminal  
2 trial. I forget whether we had any depositions. But  
3 in any event, we were unable to speak to him. We  
4 tried certainly.

5 Q Do you recall generally who, if not by  
6 name, by category of person, would have been  
7 interviewed or deposed by Pillsbury in the spring of  
8 '94 concerning Castle Grande?

9 A I don't recall in any detail. There is a  
10 list of witnesses at the back of the preliminary  
11 report on Whitewater, and I think there is also a  
12 list of witnesses at the back of the so-called  
13 general report, a thin report put out in December  
14 1995 that would list who we interviewed. But it is  
15 40 or more people and I certainly haven't committed  
16 it to memory.

17 Q Now, did Mr. -- was Mr. Patterson or were  
18 you responsible for the Rose report as it related to  
19 Castle Grande?

20 A Pardon?

21 Q The Rose report, as a discussion of Castle  
22 Grande and Rose's role with regard to Castle Grande,

1 who was responsible for that?

2 A I drafted it.

3 Q So you ultimately became responsible for  
4 Castle Grande, at least as it related to Rose?

5 A At least as it related to Rose. I didn't  
6 draft the other report on Castle Grande. Patterson  
7 did that.

8 Q Did you ever do an analysis -- when I say  
9 you -- let me strike that.

10 Did Pillsbury ever do any analysis or  
11 receive any kind of analysis indicating total  
12 possible damages arising out of Castle Grande? Or  
13 was the 4 million the top number?

14 A We just used the number provided by RTC  
15 investigations.

16 Q That's the 4 million?

17 A Yes.

18 Q Therefore it would be 4 million that would  
19 include, if you were going to go after Jim Guy  
20 Tucker, that would be part of the 4 million; right?

21 A If you were going after Jim Guy Tucker with  
22 respect to Castle Grande, I'm not sure what you are

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1 saying. If 4 million is the RTC investigation's  
2 estimate of the total losses including prejudgment  
3 interest from Castle Grande, soup to nuts.

4 Q Do you recall seeing an estimate of the  
5 total loss arising from Castle Sewer and Water?

6 A I'm sure I have. I don't remember what the  
7 number is.

8 Q A million bucks?

9 A My guess is between 1 and 2 but I don't  
10 remember.

11 Q That might have been something you might  
12 have been able to go after Jim Guy Tucker for; right?

13 A I would think so. Patterson would be the  
14 person to ask.

15 Q In fact, that is actually the one claim  
16 that is still outstanding, right? The Jim Guy Tucker  
17 claim?

18 A Well, we have a tolling agreement with Jim  
19 Guy Tucker, which reminds me that what happened with  
20 him is we attempted to subpoena him, and he went to  
21 court and got some sort of order that had the effect  
22 of staying our subpoena, but then also tolling our



1 possible claims against him. So we haven't deposed  
2 him, but the statute of limitations, with respect to  
3 possible claims against Jim Guy Tucker, is also  
4 tolled.

5 The basic point of that, as I understand  
6 it, was to allow him to get the criminal trial out of  
7 the way first. But there was motion practice and so  
8 on with respect to our efforts to depose Tucker.

9 Q When does that tolling agreement expire?

10 A I don't think there is a date certain. I  
11 think it is when the court lifts the stay, or  
12 something like that. I don't think there is any date  
13 certain.

14 Q One of the things you were considering in  
15 terms of doing a civil recovery were the amount of  
16 assets the potential might have; right?

17 A Certainly.

18 Q Who were the potential defendants you  
19 identified early on with regard to Castle Grande,  
20 you, Pillsbury?

21 A I can't remember all of them. I can  
22 certainly remember some of them. Tucker would have

1 been one. McDougal would have been one. I don't  
2 know if early on we thought about the Rose Law Firm  
3 or not in that connection.

4 Q Do you recall --

5 A Obviously, at some point, we did.

6 Q Do you recall when you would have thought  
7 about the Rose Law Firm as a potential defendant?

8 A Let me answer that by giving you a little  
9 bit of explanation. I first did a little work with  
10 respect to the Rose firm when I was working on  
11 Whitewater reports, and the way I got into that was  
12 looking at Mrs. Clinton. By looking at her and her  
13 involvement or lack thereof with respect to  
14 Whitewater, I maybe wandered off into the Rose firm a  
15 bit.

16 Then that didn't seem to have much  
17 relationship, really, to Whitewater, so that work was  
18 sort of set aside and kind of sat there for a while.  
19 Then at some point, I would say in the spring of  
20 1995, the RTC asked me to take that work and expand  
21 it and prepare a report on possible claims against  
22 the Rose Law Firm.

1           So I took what I had started and then did  
2 considerable more work with respect to the Rose Law  
3 Firm. It was really, I would say late spring of '95,  
4 probably after I finished the preliminary report on  
5 Whitewater, that I began to focus more intensively on  
6 the Rose firm.

7       Q   That would be in connection with its work  
8 on Castle Grande or on some other matter?

9       A   Well, I was looking in general at any and  
10 all work it did for Madison Guaranty, and Castle  
11 Grande was one project. The preferred stock, the  
12 broker-dealer were other projects. There were a  
13 couple other projects in addition to those that  
14 pretty quickly were revealed to be inconsequential.  
15 I think there were six projects in all.

16       Q   In terms of someone who might be a  
17 potential defendant in Castle Grande, did you  
18 consider Seth Ward?

19       A   We certainly thought about Seth Ward early  
20 on because he has some assets and because he was  
21 involved in the acquisition of Castle Grande. But  
22 what we quite quickly concluded was that the

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1 settlement agreement he had entered into with the RTC  
2 in '93 or '92 or something like that settling his  
3 case against Madison Guaranty had a broad enough  
4 release that it essentially was impossible to sue him  
5 on anything related to Castle Grande.

6       Q   At the outset of the work that Pillsbury  
7 did in connection with Castle Grande, the primary  
8 people you were going to recover damages from  
9 potentially were Tucker and McDougal; is that right?

10       A   Yes.

11       Q   And Tucker's potential liability would be  
12 limited somewhere between 1 and 2 million because  
13 those were the loans he had taken out with regard to  
14 Castle Sewer and Water; right?

15       A   Well, it is my hazy recollection that the  
16 damages associated with sewer and water were in that  
17 range. I'm not the best person to ask.

18       Q   Tucker would have been the primary person?

19       A   For sewer and water, yes. Possibly R.D.  
20 Randolph as well.

21       Q   Does he have any assets?

22       A   No.

1 Q McDougal had no assets?

2 A I don't think so.

3 Q At the outset of the Pillsbury work, the  
4 focus was on Tucker; right, as someone you could  
5 recover money from?

6 A Well, fairly quickly, in the space of one  
7 to two months --

8 Q This is in '94?

9 A In '94, yes, in, say, March, April, that  
10 time frame. We would have decided that with respect  
11 to Castle Grande, Tucker was the most promising  
12 target, A, because he seemed to be involved and B,  
13 because he, unlike the others, seemed to have some  
14 money.

15 Q Consideration of the Rose firm probably was  
16 something that only entered the picture sometime  
17 probably summer of '95?

18 A Spring or summer, yes. We didn't have much  
19 evidence other than this one invoice. There was, for  
20 a long time, very little evidence connecting the Rose  
21 firm in any substantial way to the acquisition of  
22 Castle Grande.

1 Q So when do you think it was that you first  
2 had evidence linking the Rose firm to the acquisition  
3 of Castle Grande?

4 A Well, the invoice I mentioned we had early  
5 on, perhaps March of 1994.

6 Q But that was only one invoice; right?

7 A Right.

8 Q Do you recall what was in the invoice?

9 A It was an invoice for a month. It had a  
10 short and somewhat abstract description of services  
11 that was one paragraph long, not longer. It listed  
12 work that seemed to have to do with the acquisition,  
13 as I previously testified, also listed other work,  
14 work on the sewer issue and the wet/dry issue.

15 Q Was this a January '86 bill?

16 A I'm pretty sure, yes.

17 Q So Mrs. Clinton would have been listed on  
18 that bill; right?

19 A I think she is listed as one of the  
20 attorneys who worked on it --

21 Q In fact, as I recall, that bill indicates  
22 lawyers from the Rose firm attempted to close it.

1 A It may. I don't recall.

2 Q I think it also indicated they had reviewed  
3 drafts of agreements, doesn't it?

4 A It may. I don't recall. I'm certainly not  
5 in a position to disagree with you on that.

6 Q In fact, I think, of any of the bills that  
7 there were with regard to the Rose firm, that one was  
8 probably the most, at least the summary invoices,  
9 that was one of the most descriptive in terms of the  
10 work Rose had done?

11 MR. COLE: Rather than going by memories  
12 which may or may not be accurate, can we show the  
13 witness a copy of the document?

14 THE WITNESS: I think it is quoted in total  
15 somewhere in one of the Rose reports. I think maybe  
16 the first one. You want me to look?

17 BY MR. GIUFFRA:

18 Q Yes, let's just get it.

19 (Witness examined the document.)

20 A If you look at page 36 of the first report,  
21 the December 28, 1995, it is set forth there.

22 Q This particular bill, as I had recollected,

1 indicates that Rose lawyers had some role with regard  
2 to attending the ITC board meeting, reviewing a title  
3 commitment, preparing corporate resolutions,  
4 reviewing a bill of assurances, conferences, with  
5 Seth Ward regarding purchase from Brick Lile,  
6 documents indicating that Rose played some role in  
7 connection with the acquisition of the property.

8 A Yes. I handed my copy back to you but I'm  
9 sure that's right.

10 Q Why was a judgment not made earlier to  
11 focus on Rose? If you had this document back in the  
12 spring of '94, why did you wait a year to start  
13 focusing on Rose when you had a bill that indicated  
14 they had some role in the acquisition?

15 A I don't know that it is fair to say we  
16 waited a year. I wasn't the person principally doing  
17 the Castle Grande work at that time, so I'm not the  
18 best one to answer. It is certainly my understanding  
19 that we weren't finding much else. We had this  
20 invoice that indicated that the work you have  
21 described was done and we weren't finding any other  
22 indication of this. For example, I believe that when



1 Patterson interviewed Seth Ward, Ward denied the Rose  
2 firm had anything to do with the acquisition.

3 The documents we were collecting from  
4 various sources --

5 Q You, of course, knew that Ward's son-in-law  
6 was Web Hubbell?

7 A Yes.

8 Q Whether Mr. Ward would say he had any role,  
9 that wasn't the end of the analysis?

10 A Certainly not. What I was about to say  
11 when you cut me off was that the documents we were  
12 collecting from various sources didn't, so far as we  
13 could tell, seem to have been generated by the Rose  
14 firm. They didn't refer to people at the Rose firm.  
15 Witnesses we were talking to didn't recall the Rose  
16 Law Firm having any role in this. We just weren't  
17 coming up with anything when we were talking to  
18 people or looking at other people's documents.

19 Again, I'm not the best one to ask about  
20 this because I didn't conduct the interviews and  
21 wasn't the principal person reviewing the documents.  
22 But it is certainly something we were looking at, an

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1 avenue we were trying to proceed down. We weren't  
2 coming up with very much at that time.

3 Q In this bill it indicates Mrs. Clinton  
4 performed some work, Mr. Thrash, Mr. Donovan  
5 performed some work, Mr. Sheehan and Mr. Burge  
6 performed some work. Was any consideration given in  
7 the spring of 1994 to interview any of those people?

8 A I don't know. You would have to ask  
9 Patterson.

10 Q When was Mrs. Clinton interviewed with  
11 regard to Castle Grande?

12 A Well, I am the only one who has interviewed  
13 her. I interviewed her in February of this year.

14 Q That's '96?

15 A Yes.

16 Q And Thrash?

17 A Late '95.

18 Q December?

19 A November or December. I don't remember  
20 which.

21 Q Donovan?

22 A I don't think we ever interviewed Donovan.

1 Q Sheehan?

2 A Never interviewed Sheehan.

3 Q Burge?

4 A Never interviewed Burge.

5 Q The earliest a Rose lawyer was contacted by  
6 Pillsbury would have been November of '95?

7 A Certainly the earliest I talked to  
8 anybody. I think that's right, though. I don't  
9 think anyone other than me -- Patterson did one of  
10 those interviews, but I don't think we did those  
11 until the fall of '95.

12 Q The RTC presumably sent out the subpoenas,  
13 correct, for you guys?

14 A Yes.

15 Q What was the earliest date on which the RTC  
16 sent a subpoena to the Rose Law Firm for records?

17 A I think February 1994.

18 Q February 1994, a subpoena went to the Rose  
19 Law Firm. Did it ask for records relating to its  
20 representation of Madison?

21 A Oh, yes. I'm pretty sure. A copy of the  
22 subpoenas is attached to the back of this same

1 report. Not a copy, but the rider or whatever to the  
2 subpoenas we produced.

3 There is a subpoena dated February 9, 1994,  
4 that called generally for any work the Rose firm had  
5 done for Madison.

6 Q You would agree this subpoena would have  
7 called for the production of any billing records in  
8 the possession, custody or control of the Rose Law  
9 Firm?

10 A I would. They are not explicitly called  
11 for. I don't think they are referred to as "billing  
12 records."

13 Q For example, the request seeking all  
14 documents relating directly or indirectly to services  
15 rendered by you to Madison, Madison Financial  
16 Corporation, or any related entity?

17 A Yes.

18 Q What was the earliest date that the RTC  
19 sent a subpoena to President and Mrs. Clinton seeking  
20 records?

21 A I think June of 1994.

22 Q Would that subpoena have also, to the best

1 you can recall, called for the production of billing  
2 records relating to Rose's representation of Madison?

3 A My recollection is a little hazier here. I  
4 don't think I drafted that subpoena. I think it is  
5 the same as for Rose in this sense. We didn't  
6 explicitly, in so many words, ask for such billing  
7 records. I think by any fair construction of the  
8 subpoena, the billing records would be within the  
9 call of the subpoena.

10 Q Again, do you recall the exact date of that  
11 subpoena?

12 A It was in June. I don't recall the exact  
13 date.

14 Q June of '94?

15 A Yes.

16 Q That would have been served on Mr. Kendall?

17 A I'm pretty sure he accepted service, yes.

18 I'm certain we didn't send a process server over to  
19 the White House.

20 Q I guess it was January 4 or 5 you got a  
21 copy of the Rose Law Firm billing records found in  
22 the White House by Mrs. Huber?

1 A They arrived on a Saturday, whether it was  
2 the 5th or 6th. The first week of January I got a  
3 copy of those records.

4 Q After getting a copy of those records, you  
5 extended the tolling agreement you entered with the  
6 Rose Law Firm?

7 A No. It was the other way around. We  
8 extended the tolling agreement in late December.

9 Q That was after you discovered the option  
10 agreement?

11 A Yes.

12 Q You extended it to the end of January;  
13 right?

14 A Yes.

15 Q And then after you found the billing  
16 records, you sought a further extension; right?

17 A Toward the middle or end of January, we  
18 realized we wouldn't be finished with our work, so we  
19 asked for and obtained another 30 days to March 1.

20 Q Did you ever ask the Rose Law Firm for an  
21 extension to May 1st?

22 A I may have, I'm not really sure. What I

1 recall is the first time I asked for an extension, I  
2 asked for one that was considerably longer than 30  
3 days. But I don't recall whether I asked for 60 days  
4 or whether I asked for six months or something like  
5 that.

6 In any event, I was fairly curtly turned  
7 down and there was some further dickering. For a  
8 while I thought we were going to settle on 60 days.  
9 Ultimately I got 30 and then I came back and got the  
10 other 30.

11 Q After the Rose Law Firm billing records  
12 were found, you asked for more time obviously?

13 A Yes.

14 Q Do you recall how much time you asked for?

15 A I think I asked for another month. In any  
16 event, we agreed on March 1.

17 Q Which was another month. But did you ask  
18 for more than a month?

19 A I don't think so. I think that at that  
20 time I got what I asked for is my best recollection.

21 Q Were you concerned that would perhaps not  
22 be enough time?

1 A No. I thought that would be enough time.

2 Q Because most of the work that Pillsbury did  
3 in connection with its analysis of Rose's potential  
4 liability was done December '95 through March 1, '96;  
5 right?

6 A No, I don't think that's right. As I  
7 earlier indicated, I started to work more intensively  
8 on Rose in the late spring of '95 and worked on it  
9 somewhat during the summer and worked on it a little  
10 less intensively in August, September and October for  
11 a couple of reasons and then sort of picked up again  
12 in November, December.

13 Q But the primary bulk of the work was done  
14 December, January, February; correct? That would be  
15 December '95 through February '96.

16 A I'm not sure that's true. I think I would  
17 say the --

18 Q You didn't have the billing records until  
19 January?

20 A Right. But we had done a lot of work  
21 before we received the billing records.

22 Q You didn't start taking depositions of



1 people until late November?

2 A Early November.

3 Q When did you first depose Hubbell?

4 A That was December.

5 Q Interview of Mrs. Clinton?

6 A February.

7 Q Did you ever interview Ron Clark, the  
8 managing partner in the Rose Law Firm?

9 A I read his testimony before your Committee,  
10 but no, I didn't interview him.

11 Q Now, you interviewed Mrs. Clinton in  
12 February; right?

13 A Yes.

14 Q That was an unsworn interview; right?

15 A Yes.

16 Q Typically, did you conduct interviews or  
17 sworn depositions?

18 A Typically, interviews, unsworn.

19 Q How did you make a judgment as to whether  
20 to do a sworn deposition or an unsworn interview?

21 A Well, I didn't make the judgment for the  
22 overall majority of these because I didn't conduct

1 them. That would be Mr. Patterson. But I think in  
2 most instances, as long as the witness seemed  
3 reasonably cooperative, we went the interview route.  
4 I think we tended to do the depositions if we were  
5 getting a fight.

6 Q Did you depose Mr. Hubbell or interview  
7 Mr. Hubbell?

8 A Interview.

9 Q Now, in your interview of Mrs. Clinton, you  
10 did not ask her any questions about where the billing  
11 records were found at the White House?

12 A That's true.

13 Q You didn't ask her any questions about  
14 whether she had ever seen the records before?

15 A I think that's right, but I don't really  
16 remember. The transcript will reflect what was  
17 asked.

18 Q Why didn't you ask her questions about the  
19 chain of custody with regard to those records which  
20 had been under subpoena, at least as far as she was  
21 concerned, spring of '94, and as far as the firm was  
22 concerned, February '94?

1       A    I frankly didn't have much interest in that  
2 because I didn't think it was terribly relevant to my  
3 analysis. Also, it was a matter that was before the  
4 grand jury. I was aware from the press that she had  
5 recently testified about that before the grand jury.  
6 In the absence of any demonstrated relevance to what  
7 I was doing, I decided to stay away from it.

8       Q    Clearly, Mrs. Clinton's conduct as a  
9 partner to the Rose Law Firm were under examination  
10 as it related to Castle Grande; right?

11       A    Yes. But that is something that occurred  
12 in '85, '86, whereas this chain of custody with  
13 respect to these billing records is an issue that is,  
14 what, '92, '93, '94, '95, which are years after  
15 Madison failed.

16       Q    Let me ask you a question. If you had  
17 gotten the billing records in the spring of '94,  
18 wouldn't that have assisted your investigation?

19       A    Certainly.

20       Q    You would agree that the billing records  
21 are important evidence of Rose's involvement with  
22 regard to Madison Guaranty; right?

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1       A    Yes.

2       Q    In fact, can you think of another piece of  
3 evidence more important to indicate what Rose did or  
4 didn't do for Madison than these billing records?

5       A    That is somewhat metaphysical. I would  
6 agree they are important.

7       Q    Can you think of another piece of evidence  
8 more important than the billing records to delineate  
9 the extent of Rose's work for Madison?

10       MR. COLE: That's a different question,  
11 which I'm sure the witness appreciates.

12       MR. GUTKIN: It is also vague and  
13 ambiguous. The witness can answer if he understands  
14 it.

15       THE WITNESS: Offhand, I can't think of  
16 anything. As I say, to me the question doesn't mean  
17 much. It seems to me to be sort of --

18       BY MR. GIUFFRA:

19       Q    I will ask another question. You were  
20 responsible for analyzing possible claims against the  
21 Rose Law Firm in connection with its representation  
22 of Madison Guaranty; right?

1 A True.

2 Q Probably the most significant claims of  
3 those possible claims was the claim arising out of  
4 Rose's representation of Madison in connection with  
5 Castle Grande; right?

6 A I think that is true.

7 Q And in terms of trying to perform your  
8 analysis, would you agree that the billing records  
9 were probably the most significant piece of evidence  
10 that you reviewed?

11 MR. GUTKIN: Same objection.

12 THE WITNESS: I find it hard to answer the  
13 question because we get into sort of an apples and  
14 oranges thing. For example, are the billing records  
15 more significant than the option? I don't know. Are  
16 the billing records more --

17 BY MR. GIUFFRA:

18 Q The option is just one single document.  
19 The billing records delineate the entire amount of  
20 work that Rose did and who did the work. Wouldn't  
21 you think that putting them on scale, the billing  
22 records would be more significant?

1 A Significant for what?

2 Q For purposes of your analysis.

3 MR. COLE: For purposes of assessing  
4 liability, Mr. Ericson, I think you would agree,  
5 would you not, that the amount of work, or even  
6 perhaps the type of work is not as important as  
7 whether or not the work was done in a manner that  
8 would then give rise to liability? I don't think you  
9 are putting a fair question to the witness.

10 MR. GIUFFRA: Why don't you let me ask the  
11 questions now and you get your shot later.

12 MR. COLE: As you wish.

13 BY MR. GIUFFRA:

14 Q In terms of examining the type of work Rose  
15 did on Castle Grande, can you think of any piece of  
16 evidence more significant than the billing records?

17 A The type of work? If what you are getting  
18 at in sort of reconstructing the history of the work  
19 and understanding the big picture, whatever, I think  
20 I would agree with you that the billing records were,  
21 perhaps, the single most useful piece of evidence I  
22 saw in terms of setting the stage, if you will, for

1 understanding the history of the engagement with  
2 respect to that matter, matter 5.

3 But I think Mr. Cole made a valid point a  
4 moment ago. They don't establish any liability, at  
5 least as far as we were concerned. So just weighing  
6 that versus another piece of evidence, like the  
7 option, like something else --

8 Q Wasn't it true you were having difficulty  
9 obtaining records from the Rose Law Firm with regard  
10 to its representation of Madison --

11 A I wouldn't agree with that. We didn't  
12 obtain --

13 Q -- very much?

14 A Well, we obtained a lot of documents  
15 overall. There were 49 boxes or something. In that  
16 49 boxes, there was very little with respect to  
17 Castle Grande. But I wouldn't say we were having  
18 difficulty. They simply didn't have them.

19 Q The Rose Law Firm was in absence of  
20 records?

21 A Right. I just don't want "difficulty" to  
22 suggest that they were holding out on us or

1 something. I didn't see any indication of that.

2 Q When did you learn that Mrs. Clinton had  
3 given an instruction to destroy records reflecting  
4 work the firm had done for Madison in 1988 -- strike  
5 that.

6 When did you learn that Mrs. Clinton had  
7 given an instruction in 1988 to destroy certain  
8 records reflecting work she had performed in  
9 connection with Madison?

10 MR. COLE: Just so the record is clear, in  
11 case this is read back in public hearing, I believe  
12 the evidence before this Committee, including  
13 documentary evidence, was the instruction  
14 Mrs. Clinton gave was to discard a number of files  
15 and records that included some work for Madison  
16 Guaranty. I don't want the evidence left on the  
17 record that Mrs. Clinton specifically instructed that  
18 Madison Guaranty records be discarded. I don't think  
19 you would agree with that, Mr. Giuffra.

20 MR. GIUFFRA: No.

21 THE WITNESS: With that clarification,  
22 sometime -- I'm a little vague on this. But I would



1 say December 1995 or January 1996, one or the other,  
2 something in that time frame.

3 BY MR. GIUFFRA:

4 Q Now, you issued your supplemental report on  
5 the Rose Law Firm February 28, 1996; right?

6 A I believe it was the 25th.

7 Q After you issued the report, did you  
8 receive additional documents from the Rose Law Firm?

9 A Yes.

10 Q What were the additional documents  
11 received?

12 A Gosh, I don't recall. There were two or  
13 three installments of them totaling a couple of  
14 inches that I got right at the end of the month or  
15 maybe the last installment came on the first of  
16 March.

17 Q Which is the day the tolling agreement ran  
18 out?

19 A Right. There wasn't anything that I recall  
20 being of much significance. I think there were some  
21 printouts of indices to computer disks from their  
22 Wang word processing system. There were other types

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1 of documents. I don't recall what they were.

2 Q Didn't you also get a copy of a September  
3 24, 1985 letter relating to Seth Ward and Castle  
4 Grande that was found at the Rose Law Firm after you  
5 had completed and submitted your supplemental report?

6 A I don't think so. I think we already had  
7 that. Maybe I'm wrong. In my recollection, we  
8 already had -- let me put it this way: The Rose Law  
9 Firm had already produced to us a copy of a letter  
10 dated September 24, 1985 from Ward to McDougal,  
11 because I believe it is referenced in one or the  
12 other or both of the Rose reports.

13 Q Did you receive any other copies of that or  
14 a similar letter after you completed the supplemental  
15 report?

16 A I don't think so.

17 Q Now, in interviewing Mrs. Clinton, did you  
18 ask her any questions about the destruction of the  
19 Madison files back in '88?

20 A Yes.

21 Q And did you ask her questions about the  
22 fact that the order was given to destroy those files

1 the same month that Mr. Ward's case against Madison  
2 went to trial?

3 A I think I asked something along those  
4 lines.

5 Q And --

6 A I think her answer was that she wasn't  
7 aware of the trial.

8 Q Did you ever put any questions to  
9 Mr. Hubbell about whether he advised Mrs. Clinton of  
10 that litigation?

11 A I don't recall whether he did or not. You  
12 have the transcript of his interview. But I don't  
13 remember.

14 Q Did you ever depose a man by the name of  
15 Joe Giroir --

16 A No.

17 Q -- or interview him?

18 A No.

19 Q Other than Mr. McDougal, were there any  
20 other potential witnesses from whom you had  
21 difficulty in obtaining testimony regarding your Rose  
22 report?

1 A I don't think this is of consequence, but  
2 it is a bit of an anachronism insofar as you referred  
3 to McDougal. We attempted to depose McDougal, I  
4 think quite a bit in advance of most of our work on  
5 Rose and he had taken the Fifth so we knew that was a  
6 lost cause.

7 Other than that, offhand, I don't recall  
8 anybody else we sought to interview but were unable  
9 to interview with respect to Rose. There were  
10 certainly others with respect to other issues.

11 Q Before we get into the specifics of these  
12 reports, I will ask you a question. I will quote and  
13 tell me whether you agree. "Pillsbury, Madison says  
14 in the report" --

15 A Do you want to tell me where you are  
16 reading and I can follow along?

17 Q I will just read it. "Pillsbury, Madison  
18 says in the report" --

19 MR. COLE: Which report?

20 MR. GIUFFRA: This is just a quote.

21 MR. COLE: You don't want to tell me which  
22 report you are reading from?

1 MR. GIUFFRA: I'm reading from a quote of a  
2 public official.

3 MR. COLE: I'm trying to understand what  
4 you are reading since you can't show it to us.

5 BY MR. GIUFFRA:

6 Q "Pillsbury, Madison says in their report:  
7 Let us spend no more time on this investigation. The  
8 Clintons are not guilty of anything."

9 Would you agree that that's a fair  
10 statement with regard to the work that Pillsbury,  
11 Madison did in all of its reports? Did you make a  
12 judgment in your reports that the Clintons were not  
13 guilty of anything?

14 A No, I don't think so. That's certainly not  
15 the way we phrased it. I think we were at some pains  
16 to say in our reports that we weren't exonerating  
17 anybody. Our judgment was that in the various  
18 circumstances there were not valid claims or were not  
19 cost effective claims to be brought against various  
20 people. But I don't recall ever saying with respect  
21 to the Clintons or anybody else that somebody is not  
22 guilty of anything.

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1 Q Would you agree it would be incorrect to  
2 say that Pillsbury, Madison concluded "the Clintons  
3 are not guilty of anything"?

4 MR. GUTKIN: Asked and answered.

5 MR. COLE: Can we go off the record for a  
6 moment with the question pending, understanding we  
7 can come back to the question?

8 MR. GIUFFRA: Sure.

9 (Discussion off the record.)

10 MR. GIUFFRA: Read back the pending  
11 question.

12 (The reporter read the record as requested.)

13 THE WITNESS: The quotation is certainly  
14 not from anything I wrote, and I don't think the  
15 statement is a fair paraphrase or summary of --

16 BY MR. GIUFFRA:

17 Q You would agree that statement would be  
18 incorrect?

19 A Incorrect as what? As a summary or  
20 paraphrase of the reports? Yes. I don't know who  
21 said that. Maybe you accurately quoted what whoever  
22 said it said, but I don't agree with that summary.

1 MR. COLE: In layman's terms, Mr. Ericson,  
2 it is also true that your reports and your  
3 conclusions did not recommend that any legal action  
4 be taken against the Clintons; is that not correct?

5 THE WITNESS: That's true, yes.

6 BY MR. GIUFFRA:

7 Q On the limited type of analysis that you  
8 were doing, civil claim, cost effective; correct?  
9 And the standard you were applying, which was  
10 intentional wrongdoing; right?

11 A Well, we operate within an environment set  
12 by the applicable laws. You are right, the  
13 applicable law limited us to claims involving fraud  
14 or intentional misconduct. That is a fairly accurate  
15 paraphrase of the statute.

16 Beyond that, the wrongful conduct, if we  
17 found any, had to have resulted in injury and damages  
18 to Madison Guaranty, the RTC standard in choosing  
19 Madison Guaranty. That was another limitation.  
20 There were a number of limitations imposed by law on  
21 our work. That's the framework in which we  
22 operated. We were not sort of just commenting in

1 general about whether anybody anywhere could bring  
2 any kind of claim for something. We were looking at  
3 whether the RTC could state a claim, and if so --

4 Q Your mission was fairly narrow?

5 A Excuse me. I don't appreciate when you cut  
6 me off midsentence. You can talk as fast as you want  
7 but don't cut me off. I think that is rude.

8 Q I apologize. Go ahead.

9 A I have forgotten what I was saying.

10 MR. COLE: It might be a reasonable time to  
11 take a lunch break since it appears we have a good  
12 deal yet to go in Mr. Giuffra's examination.

13 MR. GIUFFRA: Why don't we go another five,  
14 10 minutes.

15 BY MR. GIUFFRA:

16 Q Let me read you another sentence.

17 MR. COLE: Had you finished your response  
18 to the prior question?

19 THE WITNESS: I was saying something bought  
20 but I forget what it was, frankly.

21 MR. GIUFFRA: Let's read it back.

22 (The reporter read the record as requested.)



1 THE WITNESS: What I was about to say was  
2 if so, whether such litigation could be pursued in a  
3 cost effective manner.

4 BY MR. GIUFFRA:

5 Q You would agree that the focus of your  
6 inquiry was fairly narrow?

7 A I don't know whether it is narrow or  
8 broad. I think I have stated what the focus of our  
9 inquiry was.

10 Q Am I correct that your reports, in general,  
11 did not exonerate the Clintons of all wrongdoing?

12 A I don't think our reports exonerated  
13 anybody of anything.

14 Q So again, it would be incorrect to state  
15 that the Pillsbury report exonerates the Clintons?

16 A If someone has said that, I think that  
17 would be a misreading of the reports. But I don't  
18 know what you are reading from.

19 Q And your reports did not examine in any way  
20 whether there might be criminal liability against  
21 anyone in connection with activities at Madison or  
22 Whitewater?

1 A I think that is true. We did not focus on  
2 possible criminal liability of anybody.

3 MR. COLE: Although, to be fair,  
4 Mr. Ericson --

5 MR. GIUFFRA: Lance, you can ask these  
6 questions --

7 MR. COLE: I think I have a right. You  
8 certainly have a right to conduct your examination  
9 first. If I feel your questions either  
10 mischaracterize the response or need clarification, I  
11 think I should have an opportunity to at least ask a  
12 clarifying question. That's certainly the procedure  
13 we followed in the past depositions.

14 MR. GIUFFRA: Fine.

15 MR. COLE: My only point, and it is a very  
16 brief one, Mr. Ericson, is that as I understand your  
17 reports and I have read them carefully, had you found  
18 evidence of criminal misconduct, that might also have  
19 given rise to the kind of civil liability that you  
20 were investigating and which you described  
21 previously; am I correct in that understanding?

22 THE WITNESS: I think the question is a bit

1 hypothetical, as we didn't. I would agree with you  
2 to this extent, that in this type of context,  
3 professional liability of people associated with  
4 savings and loans, if you find you have a criminal  
5 case against somebody, often you will find that you  
6 have a civil case against someone, it may or may not  
7 be cost effective, they may or may not have any  
8 ability to pay, they may or may not have any damages,  
9 but you probably can state a claim.

10 I think that much is true. But beyond  
11 that, I think we are off into the realm of  
12 hypotheticals.

13 BY MR. GIUFFRA:

14 Q The focus of your inquiry was not to  
15 determine whether there might be criminal liability  
16 against anyone?

17 A That's true.

18 Q If you happened to stumble upon a possible  
19 crime, you might call it to the attention of the  
20 Independent Counsel; is that right? Or maybe you  
21 didn't do that.

22 A I'm not sure it would be appropriate to go

1 into what communications we might have had with the  
2 Independent Counsel.

3 Q Did you have any communications with the  
4 Independent Counsel about possible criminal claims  
5 against anyone?

6 A I didn't.

7 Q As far as you know, did you provide any  
8 information to the RTC that was later provided to the  
9 Independent Counsel with regard to possible criminal  
10 claims against anyone?

11 A I have difficulty answering that question  
12 for this reason. We provided many documents to the  
13 Independent Counsel, but why they were requested and  
14 what they did with them, you would have to ask the  
15 Independent Counsel.

16 The last part of your question is what  
17 gives me difficulty, because it sort of assumes we  
18 had a purpose in providing documents other than  
19 responding to subpoena or whatever.

20 Q Mr. Cole indicated -- strike that.

21 Did you come across any criminal, possible  
22 criminal misconduct in the course of your

1 investigation or that was just not a focus of your  
2 inquiry?

3 A It really was not a focus of the  
4 investigation.

5 Q Do you recall any instances in which you  
6 were provided evidence of possible criminality to the  
7 Independent Counsel? By "you," I mean either  
8 Pillsbury, Madison or the RTC directly or  
9 indirectly.

10 A For the reasons I indicated a moment ago, I  
11 have a little trouble with the question. We provided  
12 a lot of evidence to the Independent Counsel. I  
13 didn't have most of those conversations --

14 Q You didn't make any criminal referrals.  
15 Did the RTC make any criminal referrals to the  
16 Independent Counsel based on work that you performed?

17 A I am not aware of any criminal referrals in  
18 the sense it is normally understood, which is to say  
19 the criminal referrals I am familiar with are the  
20 type bankers prepare and so on, a formal document  
21 presented to the prosecutor. I don't think we did  
22 anything like that. We were subpoenaed by the

1 Independent Counsel. We provided a lot of documents,  
2 including our reports to the Independent Counsel.

3 Some of us, principally Mr. Patterson, had  
4 a lot of communications with the Independent  
5 Counsel. I don't know the substance of all of those  
6 communications. It was more in the sense of  
7 responding to subpoenas than in any other sense I  
8 could indicate.

9 MR. GIUFFRA: Do you want to take a lunch  
10 break now?

11 (Whereupon, at 12:26 p.m., the deposition  
12 was recessed, to be reconvened at 1:30 p.m. this same  
13 day.)

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## AFTERNOON SESSION (1:25 p.m.)

Whereupon,

BRUCE A. ERICSON

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

## EXAMINATION (Continued)

BY MR. GIUFFRA:

Q Chris Wade you did a brief interview with?

A I didn't. Patterson or Goss interviewed him early. I sought to interview Wade later, but negotiated for quite a while with Wade's attorney. The bottom line was he said he would take the Fifth and refused to cooperate.

Q What was the extent of the interview that Pillsbury conducted of Mr. Wade back in '94?

A It would have been '94, yes. I don't remember --

Q Do you know what subjects were covered?

A Mainly topics other than Whitewater, but I don't know what they were.

Q Whitewater would not have been covered?

A Was not covered in any detail at that time

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because we didn't feel prepared to interview him at that time. We tried to come back later, and as I said, he refused to be interviewed.

Q Was Castle Grande covered?

A I don't know.

Q Madison covered?

A Madison? I mean, I'm sure there were questions regarding Madison, but I don't remember the substance of the interview.

Q Was Steve Smith ever interviewed?

A I don't think so, but I'm not sure.

Q Randolph, R.D. Randolph?

A Yes, twice.

Q Complete interviews? No subjects off limits?

A I think that's true. I think they were depositions, actually. At least the second one I think was a deposition.

Q David Hale was not interviewed?

A That's right. We sought to interview him but were not permitted to do so by the Independent Counsel.



1 Q Document Bates number -- we don't mark  
2 things here. We sort of refer to them by Bates  
3 number, SJ 100192 to 198. It is a memo from you to  
4 Mark Gabrellian. It appears to be December 1, '94.  
5 The title is "case plan budget for further work."

6 (Witness examined the document.)

7 Do you recall preparing this document?

8 A I remember the document.

9 Q The last page of the document is an  
10 approximate cost number, grand total, \$290,650. Was  
11 that projected cost your work from December 1, '94  
12 until the end of your project?

13 A I think this was just on the Whitewater  
14 aspect of the project. Somebody has put a Post-it or  
15 something here in the upper right-hand corner of the  
16 first page, which obscures some words.

17 But it looks like the part that is blocked  
18 out says "further work on" something or another.  
19 There is a word missing there. I think the word is  
20 "Whitewater."

21 Q This would have just been on the  
22 Whitewater --

1 A I think this is just the Whitewater aspect  
2 of it. To answer the other part of your question,  
3 I'm not sure this was until the end of that project  
4 or if it was for a certain period of time like six  
5 months. I just don't remember.

6 Q Did anyone ever ask either at the RTC or  
7 did you ever ask the question, your grand total for  
8 your costs is \$290,000 for some period of time on  
9 Whitewater and the amount of the Whitewater loans,  
10 any conceivable loss would be a figure less than  
11 that, whether it would be cost effective to do this  
12 work?

13 A The question was did anyone ever?

14 Q Let me rephrase the question. It was  
15 poorly phrased.

16 For some period of time, you were  
17 estimating to do your work on the Whitewater phase of  
18 this was going to cost \$290,000; right?

19 A Right.

20 Q Did anyone at the RTC ever raise with you  
21 the question of whether it was cost effective to do  
22 this analysis in view of the cost that the amount of

1 money would cost to do the analysis of \$290,000 and  
2 the amount of money that could conceivably  
3 be at issue would be less than that?

4 A I can't recall any specific conversations  
5 on that subject, but I think it is fair to say that  
6 with respect to the Whitewater phase of the work,  
7 that that was something we fairly constantly had in  
8 mind. And I dare say I and others have had any  
9 number of conversations, maybe somewhat casual, with  
10 people at the RTC in which we discussed the fact that  
11 the probable outcome of the Whitewater work was that  
12 if there was a claim, it would be for an amount less  
13 than the cost of the investigation, yes.

14 I think that was generally known.  
15 Certainly, we were aware of it, and the client, the  
16 RTC, was aware of it. From time to time, we would  
17 allude to it or refer to it or whatever, yes.

18 MR. IGO: Could I interject just for a  
19 minute. I think when Ellen Kulka testified -- I  
20 think she testified before the House Committee -- I  
21 think that there were more things than just the cost  
22 of the investigation for which she authorized this

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1 investigation. I think it was the division of the  
2 agency that she testified to.

3 BY MR. GIUFFRA:

4 Q Do you recall how much the potential  
5 damages could have been? We talked about this  
6 already. It was at most \$50,000.

7 A We did talk about that already, and let me  
8 just add this. That was our conclusion at the end of  
9 the road. It is reflected in the last of the two  
10 reports on Whitewater. When we started work on  
11 Whitewater, it was by no means so clear that that was  
12 going to be the result.

13 I can amplify on that if you want.

14 Q Go ahead.

15 A We were asked to look at Whitewater, and I  
16 think we were asked -- it is fair to say the  
17 understanding was that that might not in and of  
18 itself prove cost effective. But one thesis we were  
19 exploring in so doing was looking at flow of funds  
20 between and among various entities,  
21 McDougal-controlled entities and so on.

22 So we were just considering was there some

1 larger scheme afoot, larger than, say, Whitewater,  
2 such that you might be able to take several projects,  
3 say, and hook them together, put them in one claim  
4 under some legal theory or another, and in that vein,  
5 get up to a larger level of damages such that the  
6 claim might be cost effective.

7 That was one thesis we were exploring.

8 Q But you had concerns at the very beginning  
9 of your inquiry into Whitewater about whether it  
10 would ever be cost effective to bring litigation  
11 against anyone?

12 A Yes.

13 Q So that at the end of the road you might  
14 have determined that there was a potential claim but  
15 it just wouldn't be cost effective?

16 MR. COLE: Is that a hypothetical  
17 question?

18 MR. GIUFFRA: We will let it stand.

19 BY MR. GIUFFRA:

20 Q Let's turn to the second page of your case  
21 plan. This case plan was prepared after you had a  
22 chance to do some initial work on the Whitewater

1 phase of your investigation; right?

2 A I think so. It is dated December '94. I  
3 can't tell. The Post-it covers it but I would think  
4 so.

5 Q That appears to be right from the  
6 document. You identify witnesses that you would like  
7 to talk to --

8 A Uh-huh, yes.

9 Q -- in this interview plan. What criteria  
10 did you use for identifying those witnesses?

11 A By the time I put this together in December  
12 '94, we had essentially completed our documentary  
13 review, the Tucker Allen people had prepared their  
14 databases and so on, we had done our tracing of flow  
15 of funds and we were in the process of drafting the  
16 preliminary report.

17 So we had, I think, a pretty good overview  
18 of what had gone on with respect to the Whitewater  
19 project, and the people listed are people that turned  
20 up at one point or another in the history of that  
21 project. A number of them are bankers that made  
22 extended loans to the project. There are some other

1 people that had shown up at one point or another in  
2 the project.

3 This is a fairly exhaustive list of people  
4 that had something to do, however tangential, with  
5 the project at one time or another.

6 Q Turn to page 2 of 3 of the memo.

7 A Yes.

8 Q You identify a number of people who you  
9 would like to speak with. There are some bank  
10 officials presumably set forth in paragraph A. In  
11 paragraph B, you talk about Mr. Wade and you say  
12 "Wade is important."

13 You would still, as you sit here today,  
14 agree that Wade is a potentially important witness  
15 with regard to Whitewater; right?

16 A Yes, I agree with what I said there in that  
17 paragraph.

18 Q And you were not able to speak with  
19 Mr. Wade?

20 A Yes. As I already indicated, we tried but  
21 we were not able to speak to him.

22 Q So that would be a limitation in the

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1 analysis contained in your report?

2 A I'm not sure if that means a limitation on  
3 the analysis. I guess I'm reasonably comfortable --  
4 let me put it this way. I think it would have been  
5 nice to interview Wade. I wish we had the  
6 opportunity to do so. I, frankly, would be very  
7 surprised if anything he had to say changed our  
8 analysis to any great extent, but I have not talked  
9 to the man so I obviously can't say --

10 Q You don't know whether your analysis would  
11 have been different had you spoken to Mr. Wade?

12 A Right. I could only speculate.

13 Q You had not spoken to Mr. Smith, another  
14 person identified?

15 A No.

16 Q You don't know whether your analysis would  
17 have been different had you talked to Mr. Smith?

18 A I don't know.

19 Q You never spoke to Mr. Tucker?

20 A As I indicated, we tried to but never did.

21 Q You never spoke to Mr. Latham?

22 A True, as I already indicated.



1 Q Why don't we just tick off all the people  
2 you didn't speak to. You didn't speak to Wade,  
3 Smith, Tucker, Jim McDougal, Susan McDougal, Latham,  
4 David Hale?

5 A True.

6 Q Wouldn't you agree that that group of  
7 people would constitute probably the most important  
8 players with regard to the Whitewater investment?

9 A I wouldn't agree that all of those people  
10 were important players with respect to --

11 Q Taken together.

12 A List the people again, would you.

13 Q McDougal, you didn't speak to Jim McDougal;  
14 right?

15 A Right.

16 Q You didn't speak to Susan McDougal?

17 A Correct.

18 Q So Jim and Susan McDougal, you didn't speak  
19 to?

20 A I think we covered that four times now.

21 Q Wade, Smith, Tucker, Latham, David Hale.

22 A The question was would these people, taken

1 as a group, be important? What was your question?

2 Q The most important potential witnesses with  
3 regard to the Whitewater investment.

4 A Some of them would be. Some of them, I  
5 would regard as pretty marginal.

6 Q You would agree that the two McDougals  
7 would be probably the most important witnesses;  
8 right?

9 A I think Wade is up there, too. The two  
10 McDougals and Wade, I would say they would be among  
11 the most significant.

12 Q Can you think of any witnesses more  
13 important than those three?

14 A No.

15 Q The answer would be no; right?

16 A No.

17 MR. COLE: I'm confused about one thing,  
18 and this is just probably my fault, but are we  
19 talking about the conclusions and analyses in the two  
20 reports on Whitewater Development Corporation or are  
21 you talking generally all of the Pillsbury, Madison  
22 reports?

1 MR. GIUFFRA: Focus on the Whitewater  
2 portion.

3 MR. COLE: The focus of your questioning  
4 has been the Whitewater report?

5 MR. GIUFFRA: Yes.

6 THE WITNESS: That's how I interpreted the  
7 questions.

8 BY MR. GIUFFRA:

9 Q What about David Hale?

10 A With respect to Whitewater, fairly  
11 marginal.

12 Q Now, the witnesses that you did speak to  
13 with regard to Whitewater, who would you consider to  
14 be the most important witnesses?

15 A I assume you mean the witnesses that  
16 Pillsbury spoke to as opposed to me personally?

17 Q Yes. I apologize. Sometimes I use "you"  
18 and sometimes I use "Pillsbury." I apologize for the  
19 lack of precision.

20 A I will have to think a minute about this.  
21 While I'm thinking, let me say, by way of preface,  
22 that a lot of our work, on the Whitewater report

1 especially, was very document-intensive, and frankly,  
2 the documents were more important than any particular  
3 individual.

4 Q Of course, you didn't have the opportunity  
5 to speak to probably the three people who would be  
6 the most important witnesses, the two McDougals and  
7 Wade?

8 A True.

9 (Witness examined the document.)

10 Do you have a copy of the supplemental  
11 report on Whitewater? Can I look at that?

12 (Witness examined the document.)

13 I'm looking at page 2 of the supplemental  
14 report on Whitewater, and in particular, the first  
15 full paragraph which lists the witnesses that were  
16 cited in the preliminary report.

17 As I look over the list of names, there are  
18 10 or 12 people there, I frankly don't think any of  
19 those people were what I would call real important to  
20 the Whitewater work. I think the documents were what  
21 is most important. Each painted a small part of the  
22 picture, if you will, or filled in some details,

1 provided some background.

2 But there is nobody there I would regard as  
3 having provided anything that was sort of the first  
4 order of importance.

5 Q Would you consider the Clintons to be  
6 important witnesses?

7 A I think they would be significant witnesses  
8 with respect to Whitewater and yes, their  
9 interrogatory answers. I think they were as  
10 significant or more significant than the people  
11 mentioned on page 2 of that supplemental report, yes.

12 Q With regard to the Clintons, you relied on  
13 the interrogatories for the Whitewater phase?

14 A Relying, as opposed to interviewing, you  
15 mean?

16 Q Yes.

17 A Yes.

18 Q In your case plan, you indicate you had an  
19 interest in talking to Gary Bunch. Did you ever talk  
20 to Gary Bunch?

21 A No.

22 Q Why not?

1 A We frankly never talked to most of the  
2 people listed in this case plan. The case plan was  
3 sort of everyone else we could think of as a result  
4 of the document work, we wanted to sort of tidy up  
5 any loose ends.

6 Any further discussions, it was mutually  
7 agreed that we knew pretty much by this point as a  
8 result of the documentary work what the possible  
9 damages were, what the possible theories were.

10 There was nothing there that appeared  
11 terribly interesting or actionable. This stuff seems  
12 kind of marginal and not cost effective. So of the  
13 people listed in this plan, we did not end up  
14 interviewing many of them at all.

15 Q When would it have been that you would have  
16 advised people at the RTC that it would not in all  
17 likelihood be cost effective to proceed against  
18 anyone in connection with Whitewater?

19 A I can't think of one meeting or  
20 conversation. It was certainly the conclusion of the  
21 preliminary report which had been --

22 Q The preliminary report is dated April '95?

1       A    Right. I was in the process of drafting it  
2 for quite a bit before then. As they saw drafts of  
3 that and as we discussed drafts of that, it certainly  
4 would have been implicit, if not explicit. It wasn't  
5 as if we sat down on one occasion and said here it  
6 is, my conclusion is this isn't cost effective. It  
7 was embodied in the report.

8       Q    Prior to the date of the initial -- when  
9 was the date of the first draft of the report dated,  
10 April 24, 1995?

11       A    October 31, 1994.

12       Q    Prior to October 31, 1994, did you speak to  
13 anyone at the RTC about what you thought your  
14 preliminary conclusions would be with regard to  
15 whether it would be cost effective to bring a civil  
16 claim on behalf of the RTC in connection with the  
17 Whitewater investment?

18       A    I'm reasonably sure I must have, but  
19 nothing sticks in my mind.

20       Q    If as of October 31, '94, you had made a  
21 judgment that it wasn't cost effective to proceed  
22 with a civil action on behalf of the RTC in

1 connection with Whitewater, why were you proposing a  
2 case plan and budget for further work that would cost  
3 a little bit less than \$300,000?

4       A    I think I was asked to put this together.  
5 But I don't really have any good recollection of what  
6 the context or the discussion was. Mark would have  
7 asked me to put it together. But I can't really add  
8 to what it says on the first page of the memo.

9       Q    If you made a judgment that there were no  
10 cost effective claims that were to be brought in  
11 connection with Whitewater, why go forward with  
12 further investigation?

13       A    Well, the client asked us to. We said we  
14 would do so to the extent the client asked us to do  
15 so. I think, as Jim Igo indicated, at least with  
16 respect to Whitewater, the client felt this was  
17 something that needed to be thoroughly explored,  
18 whether or not it was cost effective.

19       Q    Did you ever speak to Jack Lyon in  
20 connection with your work?

21       A    Yes.

22       Q    When did you speak to Jack Lyon?



1       A    I attended several meetings at which he was  
2 present. I don't remember how many. I would say two  
3 or three.

4       Q    Do you recall when those meetings were?

5       A    If I think about it a while, I might.

6            The most recent was one, I think, sometime  
7 in the second half of 1995 in which I reported  
8 briefly on our work which was then ongoing with  
9 respect to the Rose Law Firm. Possibly it was August  
10 1995, but I'm not really sure.

11          Before that, I think there would have been  
12 one RTC -- I'm not real sure of this -- I think there  
13 would have been one sometime in the spring of 1995  
14 with respect to Whitewater. It probably would have  
15 been reasonably close in time to the completion of  
16 the April report, but I can't tell you if it was  
17 before or after or how much.

18          Perhaps there was a third, but I don't have  
19 any clear recollection. One time or another, I know  
20 I have attended a number of meetings at the RTC with  
21 a number of people. No offense intended to anybody,  
22 but frankly, they sort of blur together after a

1 while.

2       Q    Who were some of the other people who would  
3 have attended these meetings?

4       A    There tended to be a number of people  
5 there. The general counsel would be there and in  
6 some cases, that was Ellen Kulka. At least in the  
7 case of the last meeting it would have been her  
8 successor, William Kelshaw.

9            It varied a little bit. Typically, there  
10 would be a number of people from the professional  
11 liability section from the top down, from, say, Tom  
12 Hindes and Andy Tomback, Mark Gabrellian would  
13 typically be there, Jim Igo would typically be there,  
14 me, Linda Medar would sometimes be there, Terry Arbit  
15 would sometimes be there, perhaps people from Tucker  
16 Allen would sometimes be there, perhaps people from  
17 our co-counsel, Jordan Keyes would sometimes be  
18 there.

19          There might be other people as well. I  
20 think Peter Knight attended at least one meeting,  
21 maybe the last one.

22          I don't have any recollection beyond that.

1 Q Do you recall any discussion in any of  
2 these meetings involving yourself and Mr. Lyon or  
3 were you -- strike that.

4 A Were you basically providing information to  
5 people at these meetings or was instruction or  
6 direction being given to you?

7 A It was more the former than the latter.  
8 Typically, the format would be -- there would be a  
9 presentation that, typically, I would deliver part of  
10 the presentation and give a little talk about what we  
11 were doing and where we are and sort of not unlike an  
12 oral argument or something, there would sometimes be  
13 questions, there might be questions from Ryan or  
14 Kulka or others.

15 I would answer them to the best of my  
16 ability. There might be a little discussion, but  
17 there weren't typically directions or orders or  
18 anything like that.

19 It was more informational sort of a status  
20 report than anything where orders would be given. I  
21 can't say no one ever said, well, we ought to do this  
22 or that, but it certainly doesn't stick in my mind of

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1 as that sort of --

2 Q Was there ever any discussion of Jean Lewis  
3 in these meetings?

4 A I don't recall.

5 Q Do you know who she is?

6 A I know who she is.

7 Q Did you ever interview her?

8 A No. I talked to her on the phone once or  
9 twice.

10 Q Do you recall anyone ever discussing Jean  
11 Lewis at any of these meetings?

12 A No.

13 Q Have you ever discussed Jean Lewis with  
14 anyone at the RTC?

15 A Oh, I must have had casual conversation but  
16 nothing sticks in my mind.

17 Q Did you ever discuss Jean Lewis with Jack  
18 Ryan?

19 A No.

20 Q Ellen Kulka?

21 A I'm sure I didn't.

22 Q Do you ever recall anyone saying anything

1 of a derogatory nature about Jean Lewis at the RTC?

2 MR. COLE: Do you mean about her personally  
3 or about her work?

4 MR. GIUFFRA: Either.

5 THE WITNESS: I can't say I never heard  
6 anything of that sort, but I certainly don't recall  
7 anything specific or very factual or anything, no.  
8 As I think of it, let me add to one of my previous  
9 answers.

10 In November 1994, I think there were  
11 meetings of the type I have just described. I think  
12 there were two that the topic would have been  
13 Whitewater. I think one was a presentation to Kulka,  
14 and then there was a second one a week or so later  
15 that was a presentation to Ryan with Kulka present.

16 In each case, there would have been this  
17 sort of audience of the size I described before.

18 BY MR. GIUFFRA:

19 Q Why was the second meeting held?

20 A I don't know. I was asked to show up and  
21 make a presentation to Ryan. Why were there two as  
22 opposed to one I can't tell you.

1 Q Did Ryan indicate why he wanted this  
2 presentation from you?

3 A No.

4 Q Did anyone indicate why Ryan wanted a  
5 presentation from you?

6 A No. He is the head of the agency. No one  
7 said anything and I can't say I gave it a moment's  
8 thought.

9 Q In your prior work with the RTC, had you  
10 ever given a presentation to the head of the agency?

11 A I'm not sure. In the Dean case, I know  
12 that Chuck and I met -- Chuck Patterson and I met  
13 with Ellen Kulka once. I can't remember whether or  
14 not we also met with Ryan. I know we met with Kulka  
15 at least once about the Dean case.

16 Q How many meetings did you have with Ellen  
17 Kulka in connection with the entirety of your work  
18 that was related to Madison?

19 A I'm not sure. As I said, I have recounted  
20 for you several of these meetings. I guess I am up  
21 to three or four, total, but I don't have any  
22 recollection beyond that.

1 Q At any of the meetings you had with the  
2 RTC, was there any discussion of any White House  
3 interest in your inquiry?

4 A No, I don't remember anything of that sort.

5 Q Any discussion of possible political  
6 ramifications of your inquiry?

7 A No.

8 Q Any telephone calls or anyone ever say,  
9 well, this could have a possible political  
10 ramification or consequences?

11 A No.

12 Q Did you ever have any discussion with  
13 anyone at the RTC about the need to keep the results  
14 of your inquiry confidential?

15 A Only in the sense, that in any engagement,  
16 but especially in connection with this engagement, it  
17 has always been the instruction from the RTC that we  
18 are not to talk to the press and we are to be careful  
19 to guard against leaks.

20 From time to time, that is reiterated to  
21 us, that is, the RTC ground rules and that if we get  
22 a call from the press, we refer it to the Office of

1 Communications or whatever it is called and we don't  
2 say anything beyond that.

3 From time to time, that is reiterated and  
4 that's about the extent of it. I would pass that  
5 along to others at the firm, or remind them from time  
6 to time, or memorialize it in a memo, or something  
7 like that. But that's just a reminder that we don't  
8 talk to the press.

9 Q Now, I want to ask you a number of  
10 questions about the supplemental Rose report. You  
11 may want to keep a copy out while I plow through it.

12 It is your prior testimony that you were  
13 satisfied with the March 1st extension on the tolling  
14 agreement?

15 A Yes.

16 Q Didn't want any more time?

17 A I would have taken more, but I didn't need  
18 it.

19 Q Did you seek more time?

20 A No.

21 Q You would agree that Seth Ward is an  
22 important witness with regard to Castle Grande?



- 1 A Yes.
- 2 Q And you had not deposed Seth Ward?
- 3 A I personally had not deposed Seth Ward. As
- 4 I indicated earlier, Mr. Patterson interviewed him --
- 5 Q But had a fairly short interview?
- 6 A Yes.
- 7 Q It was very unsatisfactory?
- 8 A Right.
- 9 Q In your report, you rely upon a deposition
- 10 that was conducted by the Senate Banking Comm.
- 11 A Yes, indeed, by you and Mr. Cole, I
- 12 believe. It was a quite interesting deposition.
- 13 Q Not many questions.
- 14 A Lots of answers. I didn't envy the task.
- 15 MR. GIUFFRA: Off the record.
- 16 (Discussion off the record.)
- 17 BY MR. GIUFFRA:
- 18 Q You obviously didn't know that the Senate
- 19 Banking Committee was going to conduct a deposition,
- 20 I believe it was on February 9th or February 10th?
- 21 A Didn't know in advance, that's right; I
- 22 didn't know in advance.

- 1 Q When did you get a copy of the deposition?
- 2 A I don't recall exactly. I think it was
- 3 maybe about the third week of February.
- 4 Q So almost 10 days before, literally days
- 5 before your report was going to be finalized?
- 6 A Within two weeks of finishing the report, I
- 7 would think.
- 8 Q We did the deposition around February
- 9 10th. The report is dated the 25th. I don't think
- 10 we gave it to you right away.
- 11 A That's right.
- 12 Q You probably got it within a week of the
- 13 conclusion of the report?
- 14 A The best I can say is a week or 10 days,
- 15 something like that. I don't remember.
- 16 Q You identified the option as being a reason
- 17 why you needed to get an extension of the statute of
- 18 the tolling agreement, right, back in the end of
- 19 December?
- 20 A Yes.
- 21 MR. COLE: I'm sorry. I know we all know
- 22 what we mean when we say "the option" in this room.

1 But there was more than one option or piece of paper  
2 that could be described as an option. I think for  
3 the record, it might help to specify.

4 I assume you are talking about the May 1985  
5 option?

6 THE WITNESS: May 1, 1986.

7 MR. COLE: I'm sorry. I misspoke.

8 BY MR. GIUFFRA:

9 Q Why hadn't the Pillsbury firm made an  
10 attempt to go and interview Mr. Ward in December,  
11 January, February?

12 A You are assuming a fact not in evidence,  
13 which is that we haven't made an attempt. We had.  
14 We had made a number of attempts to reinterview Ward  
15 in that time frame but got nowhere.

16 Q Did you ask if Mrs. Clinton's interview  
17 could be a sworn deposition?

18 A No.

19 Q Now, there was a concern expressed in your  
20 supplemental report that conclusions that you stated  
21 in the December report could be used if you ever made  
22 a decision to bring an action against Rose.

1 A I think I know what you are referring to,  
2 but I'm not sure.

3 Q Let me rephrase the question.

4 A Are you referring to a footnote somewhere  
5 toward the back that alludes to some public  
6 dissemination of the previous report? Is that what  
7 you are referring to?

8 Q When you did the supplemental report, you  
9 tried to analyze whether a claim could be brought,  
10 you obviously had to take into account the fact that  
11 on December 28, '95 you had issued a report  
12 indicating that no claim should be brought; right?

13 A Well, I don't think that fact weighed very  
14 heavy on my mind.

15 Q But would you agree that the December 28,  
16 1995 report could have been used by the Rose Law Firm  
17 in its defense of a civil action brought by the RTC?

18 A I think if a civil action were brought, it  
19 would be useful to the Rose Law Firm to have a copy  
20 of our report because, to some extent, it would give  
21 the defendant a road map to our thinking.

22 But our issuance of the report did not

1 create any problems in and of itself. The problem,  
2 if it be a problem, was that somebody, I think  
3 somebody -- I don't know for a fact -- but I think  
4 somebody on the staff of this Committee gave a copy  
5 of the report to the Rose Law Firm. We didn't  
6 release it publicly.

7 Q That's not the question, though. The  
8 question is because the December 28, 1995 report was  
9 made available to the Rose Law Firm.

10 A By whom? Not by us.

11 Q Do you know whether it was made available  
12 to the Rose Law Firm?

13 A Well, I know this: counsel for the Rose Law  
14 Firm has told me that they have a copy of the report.

15 Q Did they indicate from whom they obtained  
16 this copy?

17 A I don't recall.

18 Q You are sure you don't recall?

19 A Yes, I'm sure I don't recall.

20 MR. GIUFFRA: Off the record.

21 (Discussion off the record.)

22 MR. GIUFFRA: Back on the record.

1 BY MR. GIUFFRA:

2 Q You indicated in the supplemental report  
3 that the fact that Rose had obtained a copy of the  
4 December 28 report might put the RTC at a  
5 disadvantage in eventual litigation?

6 A I said there is a footnote that addresses  
7 that topic somewhere in this report. As I sit here  
8 flipping through it, I can't find it. I know there  
9 is a footnote that expresses something along those  
10 lines. I can't say it was a very great concern, but  
11 I said something or another on that subject in that  
12 footnote.

13 Q The December report and the February report  
14 reached the same penultimate conclusion; right, not  
15 warranted or cost effective to bring an action  
16 against the Rose Law Firm?

17 A I think that is the ultimate conclusion,  
18 not the penultimate.

19 Q Weren't you limited in your analysis in the  
20 supplemental report by the fact that you had already  
21 done a report in December based on less information  
22 than you had in February?

1 A Limited? No.

2 MR. GUTKIN: Vague and ambiguous.

3 BY MR. GIUFFRA:

4 Q Did you believe in the supplemental report  
5 you were free to disregard all the conclusions that  
6 you had stated in the -- strike that.

7 In the February report, did you take a  
8 fresh look at the available evidence?

9 A I sure tried to, yes. I felt perfectly  
10 free to change my mind if the new evidence warranted  
11 it. As it turned out, it didn't warrant it. I would  
12 have no hesitance about changing my mind if the  
13 evidence had warranted it.

14 Q Did the fact that you had concluded in the  
15 December report that no civil action could be brought  
16 in a cost effective manner against the Rose Law Firm  
17 in any way affect the conclusion you reached in the  
18 February report with regard to cost-effectiveness of  
19 the civil suit against the Rose Law Firm?

20 Maybe you ought to have her read that  
21 back.

22 (The reporter read the record as requested.)

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1 THE WITNESS: I think, as I stated, the  
2 answer is no. The footnote is 389 on page 156, the  
3 footnote we have been talking about.

4 BY MR. GIUFFRA:

5 Q Okay. Why do you believe that the fact  
6 that you had concluded in the December report no  
7 litigation could be brought in a cost effective  
8 manner against Rose did not affect your analysis with  
9 regard to the February report?

10 A Because I think I approached the new  
11 evidence with an open mind. I'm not unwilling to  
12 change my mind. People who know me will tell you I  
13 do it all the time.

14 Q Was anyone else involved in making the  
15 judgment as to whether a civil action could be  
16 brought in the February report? Or was the decision  
17 your decision?

18 A I would regard the decision as -- not  
19 decision, it is a report, it is a recommendation to  
20 the client. The decision rests with the client.

21 I would regard this work as primarily  
22 mine. I certainly shared drafts of this report with



1 the client, principally Jim Igo. I may have shown a  
2 draft to Chuck Patterson. I don't remember. I don't  
3 think I showed it to anybody other than that. The  
4 work is principally mine. Certainly nobody --

5 BY MR. GIUFFRA:

6 Q With regard to the decision -- strike that.

7 With regard to the recommendation that the  
8 Pillsbury firm was going to be making as to whether  
9 it was cost effective for the RTC to bring a civil  
10 action against Rose, you were the decisionmaker?

11 A Well, with regard to the Pillsbury report,  
12 yes. I wrote it. This reflects my thinking, my  
13 analysis, yes.

14 Q Jay Stephens was not a decisionmaker in any  
15 respect?

16 A That's true.

17 Q He didn't review any drafts of the  
18 supplemental report?

19 A That's true.

20 Q Did he review any drafts of the prior  
21 December 28 report?

22 A On the Rose firm? I don't think so.

1 Q Other than Mr. Igo, did you speak to anyone  
2 else at the RTC prior to making the recommendation  
3 that a civil action could not be brought on a cost  
4 effective basis?

5 A In February, you mean?

6 Q Yes.

7 A I may have, but I don't recall speaking to  
8 anyone other than Jim Igo.

9 Q Did you ever have any meetings with David  
10 Kendall?

11 A I have talked on the phone with David  
12 Kendall, but the one and only time I have ever seen  
13 him in person was when I interviewed Mrs. Clinton.

14 Q Did you ever have any meetings in  
15 connection with the Rose report with either Alden  
16 Atkins or Mike Buxton?

17 A I have never met Alden Atkins. I have  
18 talked to him on the phone but never about the Rose  
19 report. Buxton, I don't know who he is.

20 Q During any of the telephone conversations  
21 with Mr. Atkins, was he given an opportunity to make  
22 arguments as to why the civil action would not be

1 cost effective against the Rose Law Firm?

2 A No. In dealing with anybody like that who  
3 represents someone we would be considering suing, I  
4 would do my utmost not to reveal any of my thinking,  
5 theories and so on, because I don't want to let  
6 people know where I am going with an investigation.

7 So I wouldn't have that sort of discussion,  
8 and didn't.

9 Q The December 28 report in total, including  
10 attachments, is 85 pages. The supplemental report is  
11 164 pages.

12 Why is the supplemental report twice as  
13 long as the December report?

14 A The miracle of word processing. More  
15 seriously, it is long because it includes large parts  
16 of the previous report and it includes a lot of very  
17 lengthy quotations from interviews and depositions  
18 and transcripts of hearings before this Committee. I  
19 just made the decision to put in a lot of that stuff  
20 in hakh verba and that buckled it up.

21 Q Would it be fair to say you obtained a lot  
22 of new evidence after the December 28 report was

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1 issued?

2 A I think a fair amount, yes.

3 Q What would be the new evidence you would  
4 have obtained? The billing records; right?

5 A The billing records, Mrs. Clinton's  
6 supplemental interrogatory answers, the hearings  
7 before this Committee, a couple of depositions you  
8 gentlemen took of Ward and Jennings, my interview  
9 with Mrs. Clinton. Those are the principal things  
10 that come to mind.

11 I'm probably overlooking something. I  
12 think somewhere in the supplemental report I list, at  
13 least by general category, the new information. It  
14 is in the front somewhere.

15 Q There is a discussion in both the December  
16 28 report and in the February 25th report of the  
17 retention of the Rose Law Firm by Madison Guaranty.

18 Now, was this discussion in any way  
19 material to your analysis of whether it was cost  
20 effective for the RTC to bring a civil action against  
21 the Rose Law Firm?

22 A It was of pretty marginal materiality, I

1 would say.

2 Q Why was this analysis and discussion of the  
3 Rose Law Firm's retention by Madison Guaranty of  
4 marginal materiality?

5 A Because I couldn't see, and I think I  
6 indicated in the report any sort of claim that would  
7 arise out of the mere fact of the firm's retention, I  
8 thought it had some significance as background to the  
9 subsequent engagements and it was a circumstance or  
10 set of facts that ought to be borne in mind by any  
11 reader looking at the overall picture.

12 I don't like to take a tunnel vision look  
13 at these things, so I thought it was important to  
14 include it as part of the overall story of the Rose  
15 firm's relationship with Madison.

16 I didn't see, and I think I stated, that  
17 the mere fact of retention would give rise to any  
18 claims that I could think of.

19 Q The report is 160 pages long, and your  
20 discussion of the retainer issue is 20 pages. That's  
21 approximately I guess --

22 A The retainer or the retention?

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1 Q The retention issue. It is about  
2 one-eighth of the entire report. Why did you spend  
3 that much of the report on an issue that was of  
4 marginal materiality?

5 A I really can't add much to what I have  
6 already said about how I viewed that issue. There  
7 were a number of lengthy quotes I put in. The actual  
8 discussion as such is fairly brief of that 20 or  
9 whatever it is pages, I'll bet 15 or 16 is simply  
10 quotation from one transcript or another.

11 Q Did anybody from the RTC indicate to you  
12 there should be a discussion of the Rose Law Firm's  
13 retention by Madison Guaranty in your reports?

14 A No. That would be my decision.

15 Q Did you ever discuss the issue of the Rose  
16 Law Firm's retention by Madison Guaranty with anyone  
17 at the RTC?

18 A I can't say we never discussed it. I  
19 certainly don't recall discussing it.

20 Q Let's turn to page 26 of the February 25th  
21 report.

22 Now, you conclude in the second full

1 paragraph "thus, regardless of which version of the  
2 retention one credits, the trier of fact is highly  
3 unlikely to find that there was anything untoward,  
4 let alone fraudulent or intentionally wrongful in the  
5 circumstances of the Rose Law Firm's retention by  
6 Madison Guaranty."

7 Do you see that?

8 A Yes.

9 Q What standard are you applying here?

10 A I'm not sure I understand your question.

11 Q This standard of something being  
12 "untoward," that's not a standard. Why is that  
13 statement contained in this report?

14 MR. COLE: You are asking for a dictionary  
15 definition of the word?

16 MR. GIUFFRA: I'm asking why he wrote "it  
17 is highly unlikely to find there was anything  
18 untoward" in the circumstances of the Rose Law Firm's  
19 retention by Madison Guaranty.

20 THE WITNESS: I don't have any thoughts I  
21 can give you about word choice there. I would agree  
22 with you that the more important remark is the

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1 fraudulent or intentional wrongdoing which tracks  
2 sort of the RTC extender statute.

3 But why else I said "untoward," I must have  
4 had a reason, but I don't recall it.

5 BY MR. GIUFFRA:

6 Q If Governor Clinton had asked Jim McDougal  
7 to retain Mrs. Clinton's law firm, isn't it possible  
8 that someone might find something untoward in that?

9 A I don't think that is a question I can  
10 intelligently -- is it possible that somebody might?  
11 I don't think I can shed any light on that.

12 Q Let's go to page 5. You say in the second  
13 full paragraph "the recollections of Mrs. Clinton and  
14 Massey are consistent in broad outline although  
15 discrepancies emerge in the detail."

16 A Yes, I do say that there. I think I go on  
17 to explain it in the subsequent pages.

18 Q To what extent were the recollections of  
19 Mrs. Clinton and Massey consistent?

20 A I don't think I have anything to add to  
21 what I say in the report about that. If you want me  
22 to reread those pages and point out what I say, I can



1 do that, but I don't really have anything to add to  
2 what it says here.

3 Q Now, you recall Mrs. Clinton's statements  
4 to you -- let's go back. You recall Mrs. Clinton's  
5 statements in her sworn interrogatory in which she  
6 describes the circumstances in which Rose was  
7 retained in April of '85; correct?

8 A I recall she gave an interrogatory answer  
9 on that subject, yes.

10 Q And she indicated that Mr. Massey  
11 approached her to see if she could go to Jim McDougal  
12 to get the bill that the firm had outstanding paid?

13 A That's not exactly the way I recall it, but  
14 parts of that ring a faint bell.

15 Q Why don't I read the interrogatory. This  
16 is the interrogatory of May 24, '95, on page 6. "In  
17 the spring of '85, Massey came to see me because he  
18 had learned that certain lawyers at the law firm were  
19 opposed to doing any more work for Jim McDougal and  
20 any of his companies until he paid his bill and then  
21 only if Madison Guaranty agreed to prepay a certain  
22 amount to the firm once a month to cover prepaid

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1 bills and expenses."

2 A That's what it says.

3 Q Is Mr. Massey's testimony on that point  
4 consistent with Mrs. Clinton's?

5 A I think it is not. Again, I think this is  
6 addressed in the report. While I wrote this report,  
7 I haven't memorized it and I don't recall exactly  
8 what I said.

9 Q You recall interviewing Mrs. Clinton at the  
10 White House; right?

11 A Yes.

12 Q Now, when you interviewed Mrs. Clinton at  
13 the White House, this is discussed on page 18,  
14 Mrs. Clinton says that Vince Foster, who is now  
15 deceased, came to see her and said that Massey wanted  
16 to do the work but that --

17 A I see that.

18 Q And that perhaps she could intervene and  
19 set up an opportunity for Massey to do the work.  
20 That's on page 18.

21 A Yes.

22 Q Am I not correct that Mrs. Clinton's story

1 with regard to the retention of Madison, retention of  
2 Rose by Madison changes from her interrogatory on May  
3 24 to her interview with you in February '96?

4 A There appears to be this discrepancy at  
5 page 18, that being the interview, she identifies  
6 Vince Foster as the person who spoke to her, whereas  
7 in her interrogatory answer as quoted on page 6, she  
8 identifies Massey as the person who came to talk to  
9 her. That's different.

10 Q You don't discuss this discrepancy in your  
11 report?

12 A I don't remember whether I discussed that  
13 particular discrepancy. I certainly pointed out  
14 there are a number of differences between Massey's  
15 version and Mrs. Clinton's version. But I don't  
16 remember if I note that particular one.

17 Q You don't consider that to be a significant  
18 discrepancy?

19 A In the overall context of this, no.

20 Q No. Just in the context of the statement  
21 that the recollections are consistent in broad  
22 outline and that there is nothing untoward in the

1 retention of Madison.

2 MR. GUTKIN: Vague and ambiguous.

3 THE WITNESS: What you have noted in no way  
4 affects my conclusions as you have just paraphrased  
5 it.

6 BY MR. GIUFFRA:

7 Q You are aware that the Rose firm had done  
8 some work for the Bank of Kingston?

9 A Yes.

10 Q Did you ever make an effort to obtain  
11 records indicating whether the Rose Law Firm's fees  
12 were paid by the Bank of Kingston prior to April '85?

13 A We obtained from the Rose Law Firm records  
14 with respect to the Bank of Kingston litigation. I  
15 was aware at some point that the Bank of Kingston,  
16 later known as Madison Bank & Trust, had not paid the  
17 Rose firm's fees in its entirety. I was aware that  
18 this became an issue around 1982 or '83 and  
19 Mrs. Clinton, I think, had written a letter to  
20 somebody about it, McDougal, I guess.

21 At some point, I learned that the  
22 nonpayment of this fee became an issue within the

1 Rose Law Firm in '85 when Madison Guaranty, as  
2 opposed to Madison Bank, proposed to retain the Rose  
3 Law Firm --

4 Q Who at the Rose Law Firm advised you that  
5 it was an issue other than Mrs. Clinton?

6 A I learned it from her interrogatory  
7 answer. I'm trying to think of what other sources.

8 At some point, I had a short telephonic  
9 discussion with David Kendall on that subject, and he  
10 confirmed it was an issue.

11 But beyond those two sources, I don't  
12 recall if there was any other source.

13 Q David Kendall obviously was not a witness  
14 for the purposes of your analysis; right?

15 A That's right.

16 Q He was basically just restating  
17 Mrs. Clinton's position?

18 A Well, I doubt he would have said anything  
19 inconsistent with her position. After all, he is her  
20 lawyer. I think he indicated to me that he had  
21 talked to others at the Rose Law Firm about that  
22 subject.

1 Q Did he indicate to you who he had spoken to  
2 at the Rose firm about that subject?

3 A I think, although I'm not sure of this, it  
4 was the gentleman, Giroir, however one pronounces his  
5 name.

6 Q You never spoke to Mr. Giroir?

7 A No.

8 Q Did you make a note of your conversation  
9 with Mr. Kendall?

10 A I'm pretty sure I made a file memo and I am  
11 essentially positive that was turned over to you some  
12 time ago.

13 Q Were there any other occasions in which  
14 Mr. Kendall restated Mrs. Clinton's positions or the  
15 Clintons' positions to you in telephone  
16 conversations?

17 A I'm not sure I accept that as a correct  
18 characterization of what he was doing in this  
19 occasion. If I could rephrase your question to ask  
20 were there other occasions in which we discussed  
21 factual matters, there weren't many. Offhand, I  
22 can't think of any other than this.

1 Q Did you call Mr. Kendall or did he call  
2 you?

3 A I'm pretty sure I called him.

4 Q Did you call him to ask a factual question?

5 A I think I had other reasons for calling in  
6 addition to this, but I don't recall what they were.  
7 It would be set forth in the memo.

8 Q So your understanding as to whether there  
9 was an issue over the Madison Bank & Trust fee is  
10 based strictly on Mrs. Clinton?

11 A Well, I don't think that's what I have  
12 said. I think I mentioned several sources.

13 Q You mentioned Mrs. Clinton and her lawyer,  
14 I don't know of anybody else.

15 A I don't remember if there is any  
16 documentary evidence on that point. There is an  
17 earlier letter I mentioned about the nonpayment of  
18 the fees.

19 Q The Committee has recently received some  
20 records relating to the payment of the Bank of  
21 Kingston matter. Have you seen those records?

22 A No.

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1 Q Have you received any other records since  
2 your February report relating to the payment of this  
3 bill?

4 A I think, as I have already testified, I  
5 received some records at the end of February and  
6 maybe as late as the 1st or 2nd or so of March from  
7 Alden Atkins, and that's it.

8 Q What were the records you received from  
9 Mr. Atkins?

10 A I previously described them.

11 Q Did those have to do with the payment to  
12 the Bank of Kingston the Madison Bank & Trust fee?

13 A I'm almost positive they did not. If there  
14 is some new information on that subject, I'm unaware  
15 of it.

16 Q If there were evidence indicating that the  
17 bill was paid prior to April '85, would that change  
18 the analysis contained in your report on pages 5  
19 through 26?

20 A Paid prior to April '85?

21 Q Yes.

22 A By whom?



1 Q If there were evidence indicating that the  
2 bill was paid, the Bank of Kingston Madison Trust  
3 bill was paid prior to '85.

4 A By anybody?

5 Q That the Rose Law Firm's bill was paid.

6 A I said by anybody? Who paid the bill? I'm  
7 asking you to put some meat on the bones of your  
8 hypothetical.

9 MR. COLE: Whether or not the bill was paid  
10 in full or in part is some other meat that should be  
11 put on the bones. If we are asking some hypothetical  
12 questions, let's be as precise as possible.

13 BY MR. GIUFFRA:

14 Q If there was evidence indicating the bill  
15 was paid, just taken in whole, by Madison Bank &  
16 Trust as of April '85, would that change the analysis  
17 contained in your report?

18 A If it was paid in April or had been paid  
19 before April?

20 Q Had been paid before April.

21 A I think that would create some  
22 inconsistency between what Mrs. Clinton said -- that

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1 would suggest an inconsistency with what Mrs. Clinton  
2 said in her interrogatory answer. The whole point of  
3 the Bank of Kingston's payment or nonpayment of its  
4 bill is one I regard as being of marginal relevance.  
5 But it certainly would create an inconsistency.

6 Q Do you know a man named David Knight? Do  
7 you know who he is?

8 A He used to work at the Rose firm?

9 Q Yes.

10 A I have never spoken to him. I have seen  
11 the name, I think, on some of the bills.

12 Q Are you aware he attended the lunch that  
13 Mr. Massey had with John Latham in which they  
14 discussed the possibility of Madison Guaranty sending  
15 some business to Rose?

16 A That Knight attended the Latham-Massey  
17 lunch?

18 Q Yes, were you aware of that?

19 A I don't recall that. I have read Massey's  
20 testimony before this Committee. I don't remember  
21 whether there was any allusion to that or not.

22 Sitting here today, that is not something I recall

1 hearing.

2 Q You never spoke to Mr. Knight?

3 A No.

4 Q If you had known Mr. Knight had attended  
5 the lunch, would you have wanted to talk to him?

6 A Oh, I might have. If I had the time, I  
7 might have gotten to it but I wouldn't have regarded  
8 it as crucial or anything like that. But I might  
9 have.

10 Q Would your analysis be at all different if  
11 you were aware that Mr. Knight's testimony was that  
12 Mr. Latham advised both Mr. Knight and Mr. Massey  
13 that the Madison Guaranty S&L was sending its  
14 business to the Mitchell, Tucker firm and wasn't  
15 about to send it to Rose?

16 A Say that again. Knight testified --

17 Q Would it change your analysis in any way if  
18 you were aware that Mr. Knight testified that Massey  
19 and Knight were unsuccessful in pitching the business  
20 to Latham?

21 A Well, that would certainly be inconsistent  
22 with Massey's testimony, as I recall it. I don't

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1 think anyone else testified to that lunch. I don't  
2 know if Latham has ever said anything on that  
3 subject.

4 Again, I don't think this would have any  
5 material effect on any conclusion I would reach.

6 Q Let's turn to page 9 of your report. It  
7 says here "as this indicates, Massey thinks that his  
8 talk with Latham led somehow to the business but he  
9 is not quite sure how."

10 What is the basis for that statement?

11 A It follows from the passage you just  
12 quoted.

13 Q I didn't quote any passage. I just read  
14 what you wrote, your analysis.

15 A I know, but I said "as this indicates," the  
16 sentence follows a lengthy quotation from a  
17 transcript of Massey's testimony before this  
18 Committee, and I'm commenting on the testimony.

19 Q Where in the testimony, though?

20 (Witness examined the document.)

21 A Actually, I think it is maybe a flaw in my  
22 writing, but I think that the quotation that follows

1 that sentence really is more to the point than the  
2 one preceding it, the one that fills the remainder of  
3 page 9 going on to page 10.

4 Q Where does Mr. Massey say that his lunch  
5 with Mr. Latham led somehow to the business?

6 A I think his colloquy with Senator Sarbanes  
7 there, where Massey says "I don't think the work came  
8 to us coincidentally," and then Senator Sarbanes  
9 describes the circumstances. And Massey seems to  
10 agree with his characterization of them, that at the  
11 bottom of page 9 --

12 MR. COLE: Off the record.

13 (Discussion off the record.)

14 BY MR. GIUFFRA:

15 Q Senator Sarbanes said "there was a need for  
16 representation, you made your pitch. You were  
17 looking for representation of securities issues.  
18 Maybe we can bring the client in the door. We may  
19 have had such a conversation, correct? Yes." Okay.

20 That doesn't support the statement in your  
21 report, on my reading of it.

22 A Well, I don't think we are here to argue

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1 over interpretations of these.

2 Q Is that the colloquy that you think  
3 supports the statement?

4 A I think the entire passage of which you  
5 quoted, that seems to be the thrust of the testimony  
6 taken as a whole is that Massey pitches the business,  
7 the business comes in the door, Massey had something  
8 to do with it, perhaps Mrs. Clinton had something to  
9 do with it. In any event, they both had something to  
10 do with it.

11 Q You say Massey had something to do with  
12 it. Where is the testimony that Massey had something  
13 to do with it other than Mrs. Clinton's testimony?

14 A I think his description of his lunch with  
15 Latham. He says he pitched the business, he planted  
16 the seed, however you want to call it. He described  
17 the firm's capabilities to Latham, and then I don't  
18 know what exactly ensued from there but they ended up  
19 getting the work.

20 Q You are aware of Mr. Latham's statements on  
21 this subject; correct?

22 A I'm aware of the one I quoted, and that's

1 about it.

2 Q In which he says that McDougal and Governor  
3 Clinton made -- strike that.

4 McDougal made the judgment that Rose would  
5 be retained?

6 A Are you referring to the one on page 22?

7 Q Yes, and then you have McDougal's version  
8 of that as well.

9 A The only one I'm aware of is the one on  
10 page 22, which, I believe, is RTC Inspector General  
11 or investigator's paraphrase of what McDougal said to  
12 the Inspector General. I quote it on page 22.

13 Q And you would argue -- you would agree  
14 there is an inconsistency between Mr. Latham's  
15 version and Mrs. Clinton's version?

16 A Is there necessarily? I'm not so sure. It  
17 has been a while since I thought about this stuff.  
18 But what is the inconsistency? Maybe there is. It  
19 just doesn't leap off the page at me now.

20 Q Would you agree there is an inconsistency  
21 between Mrs. Clinton's version and Mr. McDougal's  
22 version as reported in the L.A. Times?

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1 A The L.A. Times? Certainly.

2 Q Now, as stated in your report, Massey  
3 testified to this committee that he didn't actually  
4 bring in the business; had he brought in the  
5 business, it would have been the first piece of  
6 business he brought in and that he doesn't recall  
7 bringing it in. Mrs. Clinton -- in her statements,  
8 testifies, in her interviews, interrogatory -- states  
9 that Massey brought in the business, that there was  
10 an unpaid bill and on one occasion that Massey came  
11 to her and on another occasion that Foster came to  
12 her to see if she could help him clear up the problem  
13 with regard to the bill.

14 How, in light of that, can you say that the  
15 recollections are consistent in broad outline? It  
16 doesn't seem they are consistent at all.

17 A I think you are just arguing with me.  
18 There are differences in their recollections. But it  
19 seems to me what emerges from this is that Massey had  
20 lunch with Latham and discussed the business.  
21 Thereafter Mrs. Clinton talked with somebody or  
22 another about this and it was really a joint effort,



1 if you will, that resulted in the business coming in  
2 the door.

3 And 10 years after the fact, some people  
4 recollect portions of the details differently than  
5 others. I think there is still probably consistency  
6 between the two's recollections.

7 Q How is there consistency? Mrs. Clinton  
8 says Massey came to her and said I have this client,  
9 we have an unpaid bill, can you help me with the  
10 unpaid bill. That's one version. Another version  
11 that she gives is --

12 A Foster says it to her.

13 Q Foster says it to her. Massey says he  
14 pitched the business, okay, this is Mr. Massey on  
15 page 10 saying "I was told by Latham it wasn't up to  
16 him whether we would get the business, sometime in  
17 months or weeks we would get the business."

18 When Massey is asked whether he closed the  
19 deal, he says no. When he was asked whether he ever  
20 spoke to Mrs. Clinton about it, he says it is  
21 possible. But he doesn't remember him ever speaking  
22 to Mrs. Clinton about Latham wanting to hire the

1 firm. He is confident he didn't approach  
2 Mrs. Clinton with a fee proposal in hand. He is  
3 confident that he didn't ask her to be a billing  
4 partner, doesn't recall bringing in the business.

5 He probably would have remembered because  
6 it would have been his first piece of business, and  
7 he doesn't recall bringing the business in. It is a  
8 completely different story.

9 A I don't think it is completely different.

10 Q The only part that is consistent is that  
11 Massey had a lunch with Latham, that he was told  
12 Latham didn't have the authority to bring him in.

13 A Is there a question pending?

14 Q Yes, go ahead.

15 A What I get from both is that Massey pitched  
16 it and Mrs. Clinton closed it, if you want to use  
17 sort of sales lingo here, and they don't have the  
18 same recollections as to who said what to whom in  
19 between. But I think in broad outline what you get  
20 is that Massey pitches this work and Mrs. Clinton  
21 closed the deal.

22 Q How did Mrs. Clinton close the deal based

1 on the evidence that you were able to examine?

2 A Talking with McDougal on the 23rd of April  
3 about retainer and unpaid fees or whatever and worked  
4 out some sort of arrangement that was acceptable to  
5 the Rose firm, the 2000-a-month retainer.

6 Q Mrs. Clinton testifies the deal was closed;  
7 when she went over to see McDougal, she was only  
8 dealing with McDougal to deal with the question of  
9 the unpaid bill -- let me strike that.

10 Mrs. Clinton's testimony is that -- I have  
11 to be careful. Some of it is testimony and some of  
12 it is just statements to you.

13 She says that Massey had brought in the  
14 business; right? That's her testimony, isn't it? It  
15 changes slightly.

16 A I would say it is not entirely clear from  
17 what she says, whether he brought it in or whether he  
18 simply thought there was an opportunity here. It is  
19 ambiguous.

20 Q Did Mrs. Clinton, in her interrogatories or  
21 interview with you, ever indicate that she made a  
22 sales pitch to McDougal and closed the deal?

1 A I don't recall her ever using words like  
2 that, no.

3 Q In your statement that Massey pitched the  
4 business and Mrs. Clinton closed it is not based on  
5 the evidence that was before you when you wrote your  
6 report?

7 A I think it is fair to say that that's sort  
8 of how I would harmonize the evidence obtained from  
9 Massey and the evidence obtained from Mrs. Clinton  
10 which certainly differs in a number of details.

11 Q Was it your role to harmonize the evidence  
12 or to identify inconsistencies?

13 A Well, neither. I think my role is to  
14 figure out whether we could state a claim and if so,  
15 whether we could make money prosecuting it. That  
16 involves weighing the evidence, looking at the  
17 various pieces of it and trying to decide what you  
18 think you could prove in court.

19 I think deciding that you have some  
20 evidence that is contradictory at points and agrees  
21 at other points, you weigh it all and consider it,  
22 and ask yourself, how is this likely to play out in

1 front of the judge or jury, and what are they likely  
2 to conclude after they hear this evidence. And given  
3 those likely conclusions, are you going to win or  
4 lose?

5 What I'm saying is you take this evidence  
6 and put it all together, it is at least my judgment  
7 that what a jury would be most likely to say,  
8 assuming a jury would be presented with this issue  
9 seems pretty marginal to the analysis, as I indicated  
10 earlier.

11 But putting that to one side, whether a  
12 jury would say something along the lines of what I  
13 said, that yes, Massey pitched it and Mrs. Clinton  
14 closed it; that's what I think a jury would say.

15 MR. GUTKIN: Can we take a break at some  
16 point?

17 MR. GIUFFRA: Yes, in another five  
18 minutes.

19 BY MR. GIUFFRA:

20 Q You would agree that, prior to April '85,  
21 Mitchell, Williams was the Rose Law Firm's regular  
22 outside counsel; right?

1 A Yes.

2 Q And why didn't you consider it significant  
3 that Madison was now switching business from  
4 Mitchell, Williams regular counsel to Rose?

5 A Your question seems to assume that  
6 Mitchell, Williams was not the principal outside firm  
7 of Madison Guaranty after April 1985, which I don't  
8 think is correct.

9 Q Isn't it true that Mitchell, Williams had  
10 opened up two client matters with regard to the  
11 broker-dealer and the preferred stock?

12 A Yes, the report so states in several  
13 footnotes.

14 Q Isn't that a significant fact? That  
15 suddenly Rose is taking the business from Mitchell,  
16 Williams and giving it to Rose -- that Madison is  
17 switching the business from Mitchell, Williams to  
18 Rose?

19 A I don't find that very significant, no.

20 Q Why not?

21 A It just doesn't, to my way of thinking,  
22 prove anything.

1 Q You would agree that in your report, in  
2 your analysis section on page 23 through 26, you  
3 don't analyze the inconsistencies in Mrs. Clinton's  
4 own statements to the RTC; right?

5 A I wouldn't agree that I don't analyze  
6 them. I certainly don't itemize them or list them  
7 all there -- excuse me. Please don't interrupt.

8 What I say is they don't make any  
9 difference because regardless of whose version you  
10 credit, you don't arrive at any interesting  
11 conclusions to suggesting you have a claim against  
12 anybody.

13 Q Wouldn't the fact that someone had given  
14 two different versions be relevant if that person was  
15 looking to conceal the truth?

16 THE WITNESS: Could you read that question  
17 back, please.

18 (The reporter read the record as requested.)

19 THE WITNESS: The question strikes me as  
20 hopelessly hypothetical. It is certainly the stuff  
21 of cross-examination. And whatever argument one can  
22 make, that cross-examination could be done in any

1 number of different ways.

2 The inconsistencies of this nature in  
3 recollections a year apart about events that occurred  
4 10 years before certainly do not drive one very  
5 strongly in the direction of concluding that any  
6 particular witness is concealing the truth.

7 BY MR. GIUFFRA:

8 Q You say on page 22 of your report that  
9 "McDougal's version which was available only as a  
10 newspaper story is completely different from any  
11 other."

12 A I see that.

13 Q Is McDougal's version different,  
14 inconsistent with Latham's version of what happened?

15 A Well, from Latham we have only this one  
16 sentence, two sentences quoted immediately above, and  
17 it is hardly a complete version of what happened.  
18 But I grant you this, that what Latham purports to  
19 have said is quoted here on page 22, I think, as  
20 quoted -- I think is not necessarily inconsistent  
21 with what McDougal says.

22 Q Is McDougal's version completely different



1 from Mr. Massey's version?

2 A Completely different, in my estimation.

3 Q How is Mr. McDougal's version completely  
4 different from Mr. Massey's version?

5 A In McDougal's version, Massey and Massey's  
6 conversations with Latham and all the rest of it are  
7 out of the picture.

8 Q Fine, we will grant that, that those  
9 conversations were irrelevant to the decision. There  
10 is no inconsistency. They are just ships passing in  
11 the night. It certainly could be melded together.

12 I would like to see an inconsistency in  
13 Mr. Massey's version from Mr. McDougal's version.

14 A Is there a question?

15 Q That's the question. What is the  
16 inconsistency? How is Massey's version completely  
17 different from McDougal's version?

18 A I don't think I can add to my previous  
19 answer.

20 Q I believe your previous answer was that  
21 McDougal does not mention the fact that Massey had  
22 pitched the business in his version; correct?

1 A Something along those lines, yes.

2 Q Is there any other inconsistency or  
3 difference other than the fact that he doesn't  
4 mention something?

5 A I think it is implicit rather than  
6 explicit. But the thrust of what McDougal is saying  
7 is that the idea of retaining the firm came from Bill  
8 Clinton, and the thrust of what Massey is saying is  
9 he is the one planting the idea with Latham. It is  
10 Massey to --

11 Q I don't think Mr. Massey testified that he  
12 said he pitched the business, was unsuccessful and  
13 then at some point weeks or months later the firm was  
14 retained. He doesn't know anything about the  
15 circumstances under which the firm was retained  
16 beyond that; correct?

17 A That is his testimony, yes.

18 Q Isn't it perfectly consistent with  
19 Mr. Massey's version that Mr. Massey unsuccessfully  
20 made a pitch and at some later date, Governor Clinton  
21 and McDougal discussed the retention of the Rose Law  
22 Firm? There is no inconsistency.

1 A I'm not sure I would agree with you there.

2 Q Where is the inconsistency?

3 A I think I would say this, that on page 22,  
4 I would have been better to have not used the word  
5 "completely" and just said the word "different" from  
6 any other. I will grant you that much.

7 Frankly, I find this total discussion  
8 pretty trivial, but you are the examiner.

9 Q In your analysis you say, again,  
10 "regardless of which version of the retention one  
11 credits, the trier of fact is highly unlikely to find  
12 that there was anything untoward in the circumstances  
13 of the Rose Law Firm's retention by Madison  
14 Guaranty."

15 Now, if one credits the McDougal version as  
16 stated in your report, isn't it possible that a trier  
17 of fact could find something untoward in the fact  
18 that the Governor of the state is asking a banker to  
19 retain his wife's law firm?

20 A Isn't it possible that somebody could? I  
21 can't testify what goes through other people's minds.

22 Q Do you believe there is anything

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1 untoward -- do you believe there would be anything  
2 untoward in Governor Clinton asking Jim McDougal, the  
3 operator of an S&L, to hire his wife's law firm?

4 A Those are the facts and nothing more?

5 Q Yes.

6 A No, no.

7 MR. COLE: If my memory serves me correct,  
8 there is a statement to the effect of what  
9 Mr. Ericson just testified in his report. I can't  
10 remember the exact word. I believe he spoke to that  
11 in his report.

12 THE WITNESS: Yes.

13 BY MR. GIUFFRA:

14 Q You say it is not untoward to ask a friend  
15 to retain one's wife as a lawyer.

16 A Yes, something like that.

17 Q What if that friend is the Governor of the  
18 state and your savings and loan is being regulated by  
19 the state and the Governor is doing favors for you?

20 A Well, I mean, we are just getting off in  
21 the realm of hypotheticals for which I am not aware  
22 there is any evidence.

1 Q You don't discuss the fact that there may  
2 have been a quid pro quo in the hiring of  
3 Mrs. Clinton in your report?

4 A I'm not aware of any evidence there was.

5 Q Are you aware of evidence with regard to  
6 the leasing of certain office space from Madison  
7 Guaranty by the Arkansas Development Finance  
8 Authority?

9 MR. COLE: Before we go into a new line of  
10 inquiry, I would like to take a restroom break. If  
11 you are starting a new line of inquiry, I would like  
12 to take a break now.

13 MR. GIUFFRA: Let me ask this one  
14 question.

15 THE WITNESS: I think I have read the  
16 editorial from which you are reading. I am aware of  
17 it to that extent.

18 BY MR. GIUFFRA:

19 Q There actually was testimony.

20 A I'm not sure I am aware of the testimony.  
21 You are reading from The Wall Street Journal. I  
22 think I read that editorial. I am aware of it to

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1 that extent.

2 Q Are you aware of the hearing testimony of  
3 the -- that the Committee obtained with regard to the  
4 leasing of certain office space from Madison Guaranty  
5 by the Arkansas Development Finance Authority?

6 A I don't recall such testimony. I can't say  
7 there hasn't been any. If you can tell me who the  
8 witness was and when it was, maybe you could help me,  
9 but I don't recall.

10 Q You didn't take into account such testimony  
11 in preparing any of your reports?

12 A I don't recall it. I don't think I cited  
13 any such things.

14 MR. COLE: Are you suggesting there was  
15 public testimony on that subject from this Committee  
16 at the time Mr. Ericson prepared his reports?  
17 Because I'm not aware of any.

18 MR. GIUFFRA: No, I wasn't.

19 MR. COLE: The way you asked the question,  
20 did he take it into account, it would be difficult if  
21 it didn't exist.

22 MR. GIUFFRA: But if he had gone out and

1 done this kind of inquiry, he might have learned of  
2 this evidence.

3 /Why don't we take our bathroom break.

4 (Recess.)

5 BY MR. GIUFFRA:

6 Q In this discussion of the retainer, you  
7 evaluate Mr. McDougal's credibility but you don't  
8 evaluate Mrs. Clinton's credibility. Why is that?  
9 You accept her version as fact.

10 A I don't know that I accept her version as  
11 fact. What I end up saying is it doesn't make any  
12 difference whose version you accept. I ought to  
13 point out that McDougal's version has some pretty  
14 glaring flaws in it. I'm not sure I would say the  
15 same of Mrs. Clinton's version. It has some  
16 inconsistencies. McDougal's version is kind of like  
17 a house of cards that collapses.

18 Q Why is that?

19 A The whole suggestion, this notion of  
20 getting 2000 a month in the Clintons' pocket, upon  
21 analysis, there is nothing to that. It just doesn't  
22 do it.

1 Q You are a partner at a law firm; right?

2 A Yes.

3 Q Wouldn't you agree that bringing in a  
4 client can be significant in terms of the partner's  
5 compensation?

6 A In my firm it can, yes, I would agree.

7 Q And that it is not a question of how  
8 much -- strike that.

9 On page 23, you conclude that Mrs. Clinton  
10 may have neglected to tell her partners about her  
11 other business dealings with McDougal.

12 In fact, isn't it the case that there is no  
13 evidence that Mrs. Clinton told any of her partners  
14 about her business dealings with McDougal at this  
15 time?

16 A I would agree with you. I'm not aware of  
17 any evidence that she told her partners about her  
18 business dealings with McDougal, but the evidence I  
19 saw doesn't prove she didn't. It simply says that  
20 "the partners that I think your committee quizzed  
21 were unaware of those business dealings."

22 Q Again, the statement in the third paragraph



1 "it is not untoward to ask a friend to retain one's  
2 wife as a lawyer." That presumes that you are not  
3 the governor of a state; right?

4 A No.

5 Q So that would be true even if you are the  
6 governor of a state?

7 A Yes.

8 Q The next sentence "there is no suggestion  
9 that the money was to be a gratuity as opposed to  
10 payment for work performed, nor is there any  
11 suggestion of an improper quid pro quo."

12 A Yes.

13 Q You are not aware of any evidence, or at  
14 least an allegation of a quid pro quo surrounding  
15 Madison's retention of Rose as it relates to Governor  
16 Clinton?

17 A I'm not aware of any evidence of such a  
18 quid pro quo.

19 Q So, for example, in the McDougal version,  
20 you would argue that there is no suggestion of an  
21 improper quid pro quo in that version of the  
22 retention?

1 A From what is quoted there, I don't think  
2 there is.

3 Q Doesn't the fact that Mitchell Williams had  
4 already opened up accounts on the broker/dealer and  
5 the securities matter comport with the Latham  
6 version?

7 A I don't know that it comports with it. I  
8 don't know that it is inconsistent with it either.

9 Q You don't quote the full Latham version on  
10 page 2 of your report?

11 A I don't remember whether there is more than  
12 what I quoted or not.

13 Q Did you depose Beverly Bassett Schaffer?

14 A No.

15 Q Interview Beverly Bassett Schaffer?

16 A I didn't. I don't recall whether any of my  
17 partners did.

18 Q In fact, didn't you just rely upon memos  
19 that Ms. Schaffer had written to a New York Times  
20 reporter, Jeff Gerth?

21 A I cited those memos. I wouldn't say I just  
22 relied upon them.

1 Q Did you cite any other statements of  
2 Ms. Schaffer?

3 A I think I cited her testimony before this  
4 Committee.

5 Q Again, that testimony was in January. So  
6 you didn't speak to Ms. -- you didn't have that  
7 testimony when you did the first report; right?

8 A Well, assuming the testimony was in  
9 January, which I believe is correct, I wouldn't have  
10 had it in December.

11 Q On page 29, you say that -- this goes to  
12 the question of the telephone call between  
13 Ms. Bassett and Mrs. Clinton in connection with the  
14 preferred stock arrangement. You say that the  
15 recollections were generally consistent with one  
16 another --

17 A Uh-huh.

18 Q -- how can the recollections be generally  
19 consistent if Ms. Bassett Schaffer said that they  
20 discussed the substance of the proposal and  
21 Mrs. Clinton says that she was only asking to whom a  
22 letter should be addressed?

1 A I'm not sure your characterization of  
2 Ms. Schaffer's testimony is very accurate. I think  
3 she said they had a brief conversation that alluded  
4 to the substance, but I wouldn't describe it as a  
5 substantive conversation based on what Schaffer  
6 said. Both testified that the conversation was short  
7 and somewhat perfunctory, the thrust of which was  
8 where does this stand and who is working on it.

9 Q Well, for example, Ms. Schaffer testifies  
10 that the call was after the letter requesting  
11 approval of preferred stock issuance was sent,  
12 whereas Mrs. Clinton says the letter -- the call had  
13 to do with to whom the letter should be addressed.  
14 That's the distinction, isn't it?

15 A I don't think Ms. Schaffer is very sure on  
16 the point you just made. That's my recollection. I  
17 don't think there is any -- there is some impression  
18 or something.

19 Q The top of page 30 "my memory was that the  
20 call was after we had the letter."

21 Mrs. Clinton says the whole purpose of the  
22 phone call was to find out to whom the letter should

1 be sent. How could those two versions be generally  
2 consistent with one another other than that they were  
3 short phone calls?

4 A You seem to have picked a fairly  
5 inconsequential point and said that a memory about  
6 which Ms. Schaffer is not too sure tends to be  
7 different from Mrs. Clinton's. I don't find there to  
8 be a big distinction.

9 Q Let's look at the top of page 30 "she  
10 called and she said they had a proposal and what it  
11 was about." Now, that certainly is different than  
12 Mrs. Clinton's version, which is that she just asked  
13 to whom a letter should be addressed, isn't it?

14 A This is such at the level of such  
15 nitpicking, I really find it difficult to respond.  
16 And what it was about, in what detail. It doesn't  
17 sound to me like much detail. I'm sending you a  
18 letter about whether or not Madison can issue  
19 preferred stock, to whom should I send it.

20 This is just -- to my way of thinking,  
21 these are inconsequential distinctions and two  
22 people's recollection of a phone call that occurred

1 10 years before.

2 Q You think it is inconsequential that one  
3 person says I called her to find out to whom I should  
4 send a letter and the other person said I had the  
5 letter in hand and she told me what the letter was  
6 about and told me she represented them on this matter  
7 and that she was calling to discuss the matter, but  
8 then you said well, I already know what it is about  
9 and that I have no problem with the position and  
10 would be getting letters soon to that effect? There  
11 is a big difference.

12 A I don't think so.

13 Q You don't see a big difference between one  
14 person saying I got your letter, I'm going to agree  
15 with the proposal you set forth in the letter and you  
16 will get a letter back to that effect; and the other  
17 person saying the phone call just had to deal with to  
18 whom I should send the letter?

19 A There is a difference but I don't think it  
20 is very big in the context of this, no.

21 Q Are you aware of Mr. Massey's testimony in  
22 which he testified that he did not ask Mrs. Clinton

1 to find out to whom the letter should be addressed?

2 A I don't recall that, but I can't say that  
3 there is no such testimony. I don't remember.

4 Q If there was such testimony, would that be  
5 something you would want to include in your analysis?

6 A Say again what it was.

7 Q Number one, that Massey wrote the letter,  
8 and two, Massey never asked Mrs. Clinton to call and  
9 get the name of the person to whom the letter should  
10 be sent.

11 A I think I knew he wrote the letter. That's  
12 clear enough. The second point, that he never asked  
13 Mrs. Clinton to call and find out to whom the letter  
14 should be addressed, I think if I heard that I might  
15 have included that, if I heard it, but I don't think  
16 it would have any material effect on anything. I  
17 wouldn't say it is irrelevant, though.

18 Q Were you aware that Jim McDougal had  
19 recommended Mrs. Schaffer to Governor Clinton?

20 A I think I have seen something to that  
21 effect. Sitting right here, I can't remember who  
22 testified to that or where I heard that. But I

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1 recall, I think it was in Ms. Schaffer's testimony  
2 before this Committee, there was some discussion of  
3 that or something like that, but I could be  
4 mistaken. It rings a bell.

5 Q No reference to that in your report?

6 A Is there? I don't recall. I certainly  
7 noted that Governor Clinton had appointed  
8 Ms. Schaffer to a position. There is a footnote in  
9 which I describe Ms. Schaffer's previous work with or  
10 for Governor Clinton and so on. I made a note of  
11 those things.

12 But the particular thing you mentioned, I  
13 don't recall whether I did anything with it or not.

14 Q If McDougal had retained Mrs. Clinton to  
15 lobby one of the Governor's appointees, would that  
16 have been relevant to your analysis in any way?

17 A I certainly would have noted that fact. I  
18 would have had to think about it. I can't tell  
19 you -- I'm not aware of evidence to that effect, and  
20 so I haven't analyzed it. I would be the first to  
21 tell you I don't know much about the law of lobbying  
22 and certainly know nothing about the law of lobbying



1 in Arkansas.

2 Q So you never did any analysis of that?

3 A No, because I'm not aware of any evidence  
4 to that effect.

5 Q You are not aware of any evidence that  
6 McDougal --

7 A Hired Mrs. Clinton to lobby --

8 Q -- strike that.

9 Are you aware of any evidence that  
10 Mrs. Clinton communicated with Mrs. Schaffer?

11 A I'm aware of evidence in the phone call.  
12 That's discussed.

13 Q The phone call indicates, at least  
14 Ms. Schaffer's version, that there was some  
15 discussion of the substance of the proposal and that  
16 Mrs. Clinton told her the proposal was going to be  
17 approved?

18 A You characterize it as some discussion of  
19 the substance. As I read, especially Schaffer's  
20 testimony, it was an extremely low level -- maybe no  
21 more than I'm writing you a letter about the issuance  
22 of preferred stock.

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1 Q And Schaffer saying I'm going to approve  
2 it?

3 A Yes.

4 Q That's not a discussion of the substance of  
5 the proposal? She is telling her she is going to  
6 approve the action Mrs. Clinton had requested.

7 MR. COLE: I'm not sure that that  
8 characterization accurately -- I think if you are  
9 going to ask the witness a very specific question  
10 about his reaction to Ms. Schaffer's question,  
11 although it may slow the proceeding down, you should  
12 have before him what Ms. Schaffer's testimony was.  
13 I'm not sure that shorthand characterization is  
14 accurate.

15 BY MR. GIUFFRA:

16 Q Top of page 30, "in any event, she called  
17 and said they had a proposal and what it was about  
18 and I said 'I'm familiar with that, I have already  
19 looked at that. I agree with the' -- 'basically I  
20 have no problem with that position and you will be  
21 getting a letter soon to that effect' or something."  
22 Top of page 30?

1 A Yes. You can't tell from that how  
2 substantive the discussion was.

3 Q But it was more substantive than the  
4 communication that Mrs. Clinton described; correct?

5 A Well, let's see where hers is.

6 (Witness examined the document.)

7 Mrs. Clinton simply says she doesn't have  
8 much recollection of the call other than that she was  
9 seeking to find out to whom the letter should be  
10 addressed, and beyond that, she doesn't recall the  
11 call. She is not denying what Ms. Schaffer says.  
12 She simply doesn't remember.

13 Q Mrs. Clinton's recollection is she is  
14 calling about to whom the letter goes. Ms. Schaffer  
15 says she has the letter and will act favorably on the  
16 letter.

17 A She is not negative of what Ms. Schaffer  
18 says. She says she doesn't recall anything beyond  
19 asking to whom to send the letter.

20 Q Let's turn to page 33. You say at the  
21 bottom of the text, "the acquisition of Castle Grande  
22 may have violated this rule." "This rule" being the

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1 direct investment rule under Arkansas law?

2 A Right, Rule(5)(c).

3 Q Isn't it, in fact, the case that the  
4 acquisition of Castle Grande did violate the rule?

5 A I think a trier of fact would probably  
6 conclude that is the case. You act as if it -- you  
7 act as though it is a matter of demonstrable fact.  
8 There is no holding or anything to that effect. I  
9 would agree with you that I think someone who looks  
10 at all this evidence would conclude that the  
11 acquisition did violate the rule.

12 Q In this portion of the report you are being  
13 very careful saying it may have violated. Earlier in  
14 your report you are making statements that are  
15 completely different from any other version regarding  
16 McDougal's version as to the retention of Rose. Any  
17 reason why you were more --

18 A I don't agree I was any more careful here.  
19 I tried to be careful throughout. I am certainly not  
20 claiming I bat a thousand, but I try to be careful  
21 throughout.

22 Q You indicated earlier you viewed yourself

1 as the umpire almost in trying to call these things  
2 based on the evidence as you saw it.

3 A Well, that's not the word I used. But I  
4 don't entirely disagree with it in this sense. Our  
5 job, as I saw it, was to take a dispassioned -- not  
6 an advocate's view, but a dispassioned view of the  
7 evidence and try to reach a professional judgment and  
8 decide whether there was a good case to be made  
9 here. If a claim could be stated, then we would go  
10 ahead and say can we make money.

11 Q When you are making comments --

12 A So this is analysis and relatively -- you  
13 don't have your advocate's hat on so much as your  
14 dispassionate analysis hat on and trying to look at  
15 the evidence, and decide how a trier of fact would  
16 view it.

17 Q Did anyone at the RTC participate in this  
18 dispassionate analysis of the evidence?

19 A Well, certainly reviewed drafts of these  
20 reports and discussed the drafts with me, and I think  
21 it is fair to say discussed the drafts of Chuck's  
22 report with him and so on.

1 To that extent, yes. We were in fairly  
2 continual communication with our client to discuss  
3 all manner of aspects of the engagement.

4 Q Your client had some input as to judgments  
5 you were making as to evidence?

6 A Input -- I mean, I would share drafts with  
7 the client, discuss drafts with the client --

8 Q The client would comment on the drafts?

9 A Yes. To that extent, input.

10 Q What is contained in this report and the  
11 other reports that Pillsbury prepared is not just the  
12 work of Pillsbury but it is also the work of certain  
13 RTC personnel; right? It reflects the input?

14 A To some extent I think that is fair.

15 Q It is not fair to say this is sort of an  
16 independent analysis done by Pillsbury; is that  
17 right?

18 A No. I think it is ridiculous. I mean,  
19 really. Because I discuss my work with my client it  
20 is not independent?

21 Q Did your client have any input into the  
22 actual language you used in your report?

1 A We discussed the language.

2 Q Did they make suggestions as to particular  
3 language?

4 A Yes. As you know, you have seen the  
5 drafts.

6 Q You changed tone and words at the  
7 suggestion of RTC officials; right?

8 A Certainly made a lot of word changes. I  
9 think I would make a lot of what I would characterize  
10 as stylistic changes. I would be hard pressed to  
11 identify any substantive changes I made at the  
12 suggestion of an RTC official. I can't say there  
13 aren't any, I just can't identify them.

14 Q Let's focus on Rule(5)(c). You are aware  
15 of the July 10, '85 letter from Massey to Hanley  
16 which contains calculations showing that Madison  
17 Guaranty can only invest \$900,000 in Madison  
18 Financial under the 6 percent limit?

19 A I recall a July 10 letter. I don't  
20 remember offhand the substance of it.

21 MR. COLE: Do we have a copy of the  
22 letter?

1 MR. GIUFFRA: Let's go off the record for a  
2 second and just find it.

3 (Pause.)

4 BY MR. GIUFFRA:

5 Q This July 10, '85 letter is pretty  
6 important, isn't it, to the analysis?

7 A I hate to get into a war over adjectives or  
8 whatever. I'm not sure that it is "pretty  
9 important." I'm going through these as part of an  
10 effort to see to what extent we can pin knowledge of  
11 on Madison Guaranty's situation with respect to this  
12 regulation on people at the Rose Law Firm.

13 Q Your report concludes elsewhere that  
14 knowledge of at least a partner in the law firm,  
15 potentially a lawyer in the law firm, could be  
16 imputed to the law firm; right?

17 A I think much later in the report I say that  
18 under partnership law, in certain circumstances, the  
19 knowledge of a partner can be imputed to the firm.

20 Q And this July 10 letter, there is evidence  
21 that Mrs. Clinton, from the billing records, saw this  
22 letter; right?



1 A I forget. I'm not sure there is. If you  
2 look at footnote 88, she does not recall seeing it  
3 and she recorded no time between June 18 and July  
4 10. At least, to the best of my recollection, there  
5 wasn't such evidence.

6 Q Now, you accept Mrs. Clinton's statement --  
7 this is in footnote 88 on page 38 -- that she didn't  
8 see Massey's letter.

9 A I don't know that it is fair to say I  
10 accept it. I note her statement, and I note the fact  
11 that I don't have any evidence to the contrary, but I  
12 wouldn't say it is fair to say that I accept her  
13 statement.

14 Q Isn't it true that Mr. Massey testified to  
15 the Senate Whitewater Committee that Mrs. Clinton  
16 supervised her work?

17 MR. COLE: Supervised his work.

18 MR. GIUFFRA: Excuse me.

19 THE WITNESS: Yes. There was some  
20 equivocation on that. He noted she wasn't in his  
21 department. He characterized it as sort of billing  
22 partner-type supervision and so on. But I think he

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1 did more or less say she supervised his work and --

2 BY MR. GIUFFRA:

3 Q And that she had regular contact with him  
4 on the matter?

5 A I don't remember exactly those words, but  
6 that certainly wouldn't surprise me.

7 Q And that no other partner or senior  
8 associate at the firm billed time on the matter in  
9 the preferred stock deal?

10 A I don't know that that is true. I'm not  
11 sure that is true. I think some other people in  
12 Massey's group billed very modest amounts of time to  
13 that matter is my best recollection. The billing  
14 records show whatever they show.

15 Q If the billing records indicate  
16 Mrs. Clinton reviewed this letter, would that be  
17 significant to your analysis at all?

18 A Well, they don't indicate that. It is a  
19 hypothesis against the facts. If they did indicate  
20 that, showed she reviewed the letter, which shows she  
21 at least cast her eyes over a piece of paper that  
22 refers to Rule(5)(c), that much of --

1 Q You are confident the billing records don't  
2 indicate that she reviewed the record, the July 10  
3 letter?

4 A I think so. I think that's what footnote  
5 88 indicates. I haven't committed this stuff to  
6 memory. That's how I read footnote 88 in any event.  
7 If you show me wrong, be my guest.

8 MR. COLE: I think if we have a billing  
9 record to the contrary or a billing record that  
10 appears to shed light on this, we should show it to  
11 the witness.

12 MR. GIUFFRA: We will.

13 THE WITNESS: So what I was about to say is  
14 if, say, there is a billing record and that  
15 hypothetically said she had reviewed this letter,  
16 then we know she at least cast her eyes over this  
17 letter and had at least seen a letter to Rule(5)(c).

18 Now, how much knowledge that amounts to or  
19 you could impute to anybody on the basis of that, it  
20 would show she had seen a reference to the Rule. It  
21 certainly doesn't show that she has any knowledge  
22 that there is an incipient violation of the Rule or

1 that she recalled that some months later when Castle  
2 Grande came up, or for that matter, that she worked  
3 on the acquisition of Castle Grande.

4 You would be a long way from having a case  
5 even on that minor point. If there were such  
6 evidence, it would be a small but helpful step  
7 towards developing a case.

8 BY MR. GIUFFRA:

9 Q The standard that you were analyzing the  
10 conduct of Mrs. Clinton and the Rose Law Firm under  
11 was intentional knowledge; right?

12 A "Fraud" or "intentional misconduct" I  
13 believe is the wording of the statute.

14 Q Was there any evidence of negligence by  
15 Mrs. Clinton with regard to -- let's just do  
16 Mrs. Clinton -- with regard to Rule(5)(c) in that she  
17 was the billing partner on this matter?

18 MR. COLE: I don't understand what you mean  
19 by negligence with regard to (5)(c).

20 BY MR. GIUFFRA:

21 Q You analyzed these facts using fraud or  
22 intentional misconduct standard?

1 A Right.

2 Q Let's use a negligence standard. Would  
3 your analysis be different?

4 A I really haven't thought about that.

5 Q Well, what is your --

6 A You want to ask me to sit here and think  
7 about it right now?

8 Q Yes.

9 A Was she negligent with respect to  
10 Rule(5)(c)? Offhand, I don't see a case. But if  
11 someone were to ask me to express a professional  
12 judgment on that, I would want to think about it  
13 longer than I have sitting right here.

14 I don't see a case, no.

15 Q What about the Rose Law Firm, in that they  
16 acted as acquisition counsel?

17 MR. COLE: Did you have an opportunity to  
18 answer before Mr. Giuffra posed his next question?

19 THE WITNESS: I think I completed my  
20 previous answer.

21 MR. COLE: I thought you started to say no  
22 and you were about to say something further and he

1 interrupted you.

2 THE WITNESS: I was about to say  
3 something. I don't remember what it was. I'm sure  
4 it will pass.

5 BY MR. GIUFFRA:

6 Q What about the Rose Law Firm?

7 A Again, it is not something I thought about  
8 because it is not the legal standard applicable to  
9 this matter. If, again, you are asking me to sit  
10 here now and sort of think fast about the subject.

11 Q Yes.

12 A I'm thinking.

13 (Pause.)

14 I'm not sure.

15 Q Why are you not sure?

16 A Because I don't know precisely what they  
17 were retained to do and I don't know enough about  
18 what someone would say about the role of outside  
19 counsel in an acquisition situation like this to know  
20 whether there is any respectable opinion for the  
21 point of view that they should have poked around and  
22 looked for this issue given that apparently what they

1 were retained to do was to participate in the  
2 drafting of the purchase agreement. I just don't  
3 know.

4 Q Now, the direct investment rule clearly  
5 appears in the letter of July 10. It also appears in  
6 the billing records.

7 A I'm not positive the latter part of your  
8 statement is true. There is a reference in the  
9 billing records to direct investment or something  
10 like that. But it is unclear, it is at least a  
11 little unclear as to whether the rule being referred  
12 to there is the state one or the federal.

13 Q Now, it is unlikely that -- especially in  
14 the kind of investigation you were doing where the  
15 people who you might sue you are interviewing -- that  
16 they are going to admit to fraud or intentional  
17 misconduct; right?

18 A True. Few people do.

19 Q What kind of evidence do you think you  
20 would have needed in order to make a case with regard  
21 to Rule(5)(c)?

22 MR. COLE: Is there a potential case with

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1 regard to Rule(5)(c) under the standard that you were  
2 applying? There may be, but I'm just not sure that I  
3 see it with respect to the Rose Law Firm.

4 MR. GIUFFRA: My question to him was  
5 simpler than that.

6 BY MR. GIUFFRA:

7 Q What sort of evidence would you need in  
8 order to say we have enough to go on to bring an  
9 action against the Rose Law Firm or a violation with  
10 regard to 5(c)?

11 MR. COLE: But the only actions they could  
12 bring were the ones set out in statute they were  
13 operating under, fraud and intentional misconduct.  
14 You are asking him to comment on bringing a case.  
15 I'm not sure whether as a legal matter such a case  
16 could be brought.

17 MR. GIUFFRA: My question is what  
18 additional types of evidence would he have needed in  
19 order to bring a case here.

20 MR. COLE: What kind of case?

21 THE WITNESS: I must say, your colloquy has  
22 left me completely confused.



1 MR. COLE: That wasn't my intention.

2 THE WITNESS: That may not have been your  
3 intention, but it was the result. There is some  
4 issue between the two of you and I -- just for the  
5 life of me -- it is too late in the day -- I have no  
6 idea what it is.

7 BY MR. GIUFFRA:

8 Q Clearly there is a discussion of this Rule  
9 in Mr. Massey's letter; right?

10 A There is a mention of the Rule and some  
11 calculations attached that Massey or Hawkins or  
12 somebody performed.

13 Q What additional evidence would you have  
14 needed in order to go forward with a case, in your  
15 view?

16 A I have to think about this for a bit,  
17 because we weren't close to a case. I'm fairly  
18 uncomfortable, sort of free associating on this  
19 topic. There is a lengthy discussion in the report  
20 of the extent to which the evidence in here fell  
21 short of what we would need.

22 And this is my considered view of the

1 question. I'm not sure I am able to add anything  
2 intelligent to it, sitting here now.

3 What I have in mind, in particular, is a  
4 discussion starting around page 155 and going on for  
5 a ways where we discuss the elements of aiding and  
6 abetting, which I thought was the most plausible  
7 theory. I point out you need both knowledge and  
8 substantial assistance, knowledge of the wrongful act  
9 of the principal and substantial assistance in the  
10 commission of that act. I say here that evidence  
11 both with respect to the knowledge element and the  
12 substantial assistance element is lacking.

13 What you need is some fairly clear and  
14 convincing proof of knowledge and then proof that a  
15 person with that knowledge went ahead and  
16 substantially assisted in the commission of the  
17 wrongful act. I am kind of reluctant to speculate or  
18 hypothesize as to what kinds of evidence that I  
19 didn't see might have together added up to proof of  
20 those two elements, neither of which I found to be  
21 present here.

22 Q The July 10, '85 letter, that was in

1 connection with the broker-dealer application; right?

2 A Right, I believe that's right.

3 Q Which is matter 2; right?

4 A Yes.

5 Q Now, Mr. Hanley, in his memo of -- strike  
6 that.

7 (Pause.)

8 Did you review the various drafts of the  
9 IDC acquisition agreement?

10 A Yes.

11 Q And did you note the change in the various  
12 drafts where it said that there can only be an  
13 assignment to an affiliate as opposed to an entity or  
14 individual?

15 A Yes. I think I discussed that in the  
16 report.

17 Q Now --

18 A A flip-flop back and forth. I think all of  
19 that is detailed in the report.

20 Q I agree.

21 Wouldn't you agree that this could be  
22 possible evidence of knowledge on the part of the

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1 Rose Law Firm as to how the transaction was going to  
2 be structured?

3 A I think I discussed that in the report and  
4 say that that's exceedingly weak evidence, if any  
5 evidence at all, to that effect. So I think the  
6 answer to your question, no, I really wouldn't  
7 agree.

8 Q Would you find it unusual that a lawyer  
9 might ask the client why this change might be  
10 necessary?

11 A Would it be unusual for the lawyer to ask  
12 the client why the change might be necessary?

13 Q Yes.

14 A No.

15 Q Wouldn't you think a lawyer might know why  
16 the client wanted to make the change?

17 A Yes, a lawyer might. That is altogether  
18 possible.

19 Q Why don't you conclude that that is any  
20 evidence of knowledge on behalf of the Rose Law Firm?

21 A I think I discussed that explicitly. Even  
22 if the lawyer hypothetically were told that we needed

1 to change this language because I, Seth Ward, am  
2 going to buy part of this property and I am not an  
3 affiliate of Madison, I'm a live human being.

4 Let's suppose hypothetically that the  
5 lawyer was told that by Ward or anybody else. It  
6 doesn't follow that the firm has any knowledge that  
7 there is about to be a violation of Rule(5)(c) or any  
8 other kind of wrongdoing here.

9 It is, on its face, completely innocent.

10 Q Now, the Rose lawyers claim that they  
11 didn't know that the Seth Ward part of the IDC  
12 transaction was going to be 100 percent financed by  
13 Madison; right?

14 A I think that's correct. To the best of my  
15 recollection, I think they said they don't at least  
16 recall much of anything about that.

17 Q Wouldn't a lawyer normally look at the loan  
18 papers in connection with doing the closing of a  
19 transaction?

20 A Not where, as here, it was an all-cash  
21 deal, no.

22 Q Who do you think was representing Mr. Ward

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1 in connection with the IDC transaction?

2 A My view, the Rose firm was. I might  
3 amplify and say in that regard I agree with  
4 Mr. Hubbell and disagree with the others who  
5 testified to the contrary.

6 Q Specifically you mean by that?

7 A That Hubbell said that Rose represented  
8 Ward and certain other people said the contrary.

9 Q This is a document produced, it is a draft  
10 of a November 22, 1994 Whitewater report.

11 A Yes.

12 Q The final report that was -- this is the  
13 final version with changes. Why did the title of the  
14 report change from "the McDougals and the Clintons  
15 Madison Guaranty and Whitewater" on November 4 and by  
16 November 22 it is "Madison Guaranty and Whitewater  
17 Development Company"?

18 A This is not of consequence to your  
19 question, but the November 22 version is not the  
20 final version, but I think it is maybe the next  
21 draft. It is my recollection that someone at the RTC  
22 suggested the change, but I don't remember who or

1 why.

2 Q No recollection?

3 A No.

4 Q Mr. Tomback?

5 A I doubt it because I rarely talked to

6 Mr. Tomback about these things. But it is possible.

7 Q With regard to Mr. Ward, you are somewhat

8 inconsistent in some places accepting Ward's

9 testimony and in other places not accepting Ward's

10 testimony. How did you go about deciding where Ward

11 was accurate and where he was not accurate as to what

12 happened?

13 A Well, I don't accept your characterization

14 that I was inconsistent. There is some discussion of

15 Ward as a witness in at least the final report on the

16 Rose Law Firm. And in the discussion, I point out

17 his strengths and weaknesses as a witness, and

18 discuss in which areas I regard him as somewhat

19 accurate, and which areas I regard him as pretty

20 wildly inaccurate.

21 We are talking about a subject where I

22 think he is somewhat accurate, I am more inclined to

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1 give credit to his testimony than when we are talking

2 about a subject, such as the chronology of things, in

3 which I found his testimony to be unreliable.

4 Q You would agree that the second September

5 24 letter appears to be the work of a lawyer; right?

6 A It looks like it, yes.

7 Q In his deposition, Mr. Ward indicates that

8 the letter could have been backdated by weeks; right?

9 A I think that is in the deposition you and

10 Mr. Cole took. He said he was -- he was all over the

11 place on it, but he said something like days or

12 weeks, or something like that.

13 Q Now, you are aware in the Rose billing

14 records that there are indications that Mrs. Clinton

15 spoke to Mr. Hubbell; right?

16 A Yes, there are in, I think, November of

17 1985.

18 Q And she also spoke to Mr. Ward about the

19 acquisition from Brick Lile; right?

20 A Say again the last part of that.

21 Q She also spoke to Mr. Ward about the

22 acquisition from Brick Lile, the IDC transaction?



1 MR. COLE: This is one instance where I  
2 think there might be different interpretations of  
3 what that line item means. My recollection of that  
4 line item said discussions with Brick Lile regarding  
5 acquisition and development issues, or something to  
6 that effect, which I read as indicating development  
7 issues arising out of the acquisition.

8 I think you, Mr. Giuffra, have read it to  
9 indicate the acquisition per se. In this instance, I  
10 would like to get the exact language and put it in  
11 front of the witness if you plan to ask him questions  
12 about it. I believe it is in the statement that was  
13 sent to Madison Guaranty.

14 THE WITNESS: Off the record.

15 (Recess.)

16 BY MR. GIUFFRA:

17 Q Let's go back to the question of whether  
18 Mrs. Clinton was aware of --

19 (Discussion off the record.)

20 BY MR. GIUFFRA:

21 Q In the application that was submitted in  
22 connection with the broker-dealer by Rose, was there

1 any discussion of 5(c)?

2 A The application?

3 Q Yes.

4 A I don't recall there being a discussion in  
5 the application.

6 Q How about in the amendments that were  
7 submitted?

8 A I don't recall that. My recollection is  
9 that 5(c) was the issue that Charles Hanley raised in  
10 commenting on however the initial application was  
11 amended. Then there was some correspondence, the  
12 last or second to last piece was that July 10, 1985  
13 letter.

14 But in the application as such, I don't  
15 recall 5(c) being mentioned. I don't have a firm  
16 feeling about it one way or the other.

17 Q In the June 17 letter that Massey wrote  
18 you, you discuss it on page 34; right?

19 A Yes.

20 Q There was an amended application submitted  
21 by Rose in response to Hanley's memorandum; right?

22 A Yes. It says here at the top "Exhibit C to

1 the amended application addressed Rule(5)(c)."

2 Q In fact, the cover letter and Exhibit C;  
3 right? That's what it says, page 35, the top of the  
4 page.

5 A Hold on a second.

6 (Witness examined the document.)

7 Yes. It says here that the cover letter  
8 addressed 5(c) and so did Exhibit C. The reason I  
9 paused is in reading this, I wonder if Exhibit C --  
10 this is maybe a very trivial point, but let me state  
11 it. I wonder if Exhibit C is an exhibit to the  
12 amended application or is an exhibit to the letter.  
13 I just don't recall the application as such  
14 addressing 5(c) or anything like that.

15 Q You would agree there was a submission by  
16 the Rose Law Firm dated June 17?

17 A Certainly this says -- and that's my  
18 recollection -- that there was a letter that  
19 addressed 5(c) and then there was an Exhibit C -- at  
20 least to the, letter if not the application -- that  
21 dealt with 5(c) in some form.

22 Q And Mrs. Clinton -- strike that.

1 And this amended application referenced  
2 5(c); right?

3 A That's what I'm not sure of. The letter  
4 did. Exhibit C did. I'm not sure the amended  
5 application as such ever refers to 5(c). I'm just  
6 not sure. If you have it I would be glad to look at  
7 it. I'm just not sure about it.

8 Q On the same day this letter goes in, and  
9 Exhibit C to the letter goes in to the banking  
10 department, Mrs. Clinton bills for about a third of  
11 an hour for review of application amendments.

12 A Yes, it says that a little farther down the  
13 page.

14 Q Although Mrs. Clinton says she does not  
15 ever recall discussing Rule(5)(c), doesn't discuss  
16 whether -- doesn't recall reviewing Massey's June 17  
17 reply, her own billing records seem to suggest that  
18 she did in fact review the June 17 reply.

19 A Well, her billing records say "review of  
20 application amendments."

21 Q Presumably that's the June 17 submission?

22 A I think that is a reasonable inference but

1 I don't know if it is correct or not.

2 Q Presumably it would indicate she had seen a  
3 document --

4 A Referring to Rule(5)(c). I think it is  
5 evidence from which one could argue that she had seen  
6 a document referring to Rule(5)(c).

7 Q You don't make much of that in your  
8 report. Why?

9 A I don't think it takes you very far.

10 Q Why doesn't it take you very far that the  
11 billing partner in the matter reviews a document  
12 containing a reference to the Rule and when the issue  
13 in the case is whether the Rose Law Firm knew about  
14 the Rule and failed to take steps to --

15 A I don't know if you have ever been a  
16 billing partner for anything, and I have, and I sort  
17 of know what is involved in spending a third of an  
18 hour reviewing a letter and a bunch of attachments  
19 and I don't know how many pages -- 50 or 60, or  
20 whatever -- that addresses a subject about which I  
21 know very little.

22 As a litigator, as Mrs. Clinton, if I were

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1 reading something in this area, I would have known  
2 very, very little about it. I'm sure I have cast my  
3 eyes over many a thing that addresses a rule or  
4 statute, and it has made no impression whatsoever. I  
5 don't think that proves anything.

6 Excuse me. I am still talking.

7 Even if this is taken as proof, which, as I  
8 say, is a reasonable inference that she cast her eyes  
9 over this letter in June, I don't think that gets you  
10 very far in establishing the elements of aiding and  
11 abetting, the kind of intentional misconduct we are  
12 talking about here.

13 Q What about when you also view that in the  
14 context of telephone calls that Mrs. Clinton had with  
15 Mr. Massey during the same period when Mr. Massey is  
16 doing the research and when the critical issue that  
17 is arising in connection with this application is  
18 whether they are complying with the direct investment  
19 rule?

20 A I don't agree that is a critical issue. It  
21 is an issue raised by Hanley. But I think it is far  
22 from the critical issue with respect to that

1 application.

2 Q My experience in working in law firms was  
3 that when regulators raise issues and you are a first  
4 year or second year associate in a law firm, you  
5 typically go to the partner and say the regulator  
6 raised an issue, what should we do? Isn't that your  
7 experience as long as we are in the realm of  
8 experience?

9 A I don't want to quibble. When I was a  
10 first- or second-year associate, I didn't have  
11 anything to do with regulated industries or  
12 regulators, so I don't know that I ever had that  
13 experience. I agree with you to this extent, that as  
14 a relatively new lawyer, I would be inclined to seek  
15 refuge wherever I could find it.

16 In this instance, I would go to someone who  
17 didn't practice in that area and probably doesn't  
18 know much about the area, or go to somebody in my own  
19 department who could provide some useful advice.

20 I'm not sure. I probably would seek some  
21 refuge somewhere.

22 Q It appears the person he was seeking refuge

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1 from was Mrs. Clinton because she was the person he  
2 was communicating with?

3 A He did talk to her from time to time. Her  
4 time records indicate that. I think there is some  
5 indication in his testimony or the time sheets or  
6 both that he talked somewhat to some people in his  
7 department as well.

8 MR. COLE: I recall entries for discussions  
9 with Mr. Balage and others in the securities  
10 department. I can't recall, going from memory, the  
11 dates of those discussions.

12 BY MR. GIUFFRA:

13 Q Presumably he was not talking to  
14 Mrs. Clinton about the weather. He was talking about  
15 the substance of what he was doing; right? That's a  
16 reasonable inference.

17 A I think that is a reasonable inference.

18 Q She wouldn't have been billing for the time  
19 if they were talking about the weather.

20 A That's right. But there were a number of  
21 issues on the table of which 5(c) was far from the  
22 most important. It is also his testimony, I believe,



1 that 5(c) is basically an issue, for better or for  
2 worse, punted to the client and let Sarah Hawkins  
3 and/or Greg Young handle.

4 So in this instance, it may be that the  
5 refuge he sought was not Mrs. Clinton but the client,  
6 which is another approach.

7 Q The fact that Mr. Massey was aware of  
8 Rule(5)(c) and had discussed it with other partners  
9 of the firm presumably, wouldn't that be evidence if  
10 one were looking to bring a case against the Rose Law  
11 Firm with regard to negligence in connection with the  
12 acquisition of the IDC property by Madison Financial?

13 A I won't say it is not evidence at all. I  
14 don't think it is very probative evidence. I don't  
15 think it would get you very far. I don't think you  
16 could survive a summary judgment motion if that were  
17 your evidence.

18 Q Why is that?

19 A It doesn't prove much of anything. I sort  
20 of addressed this earlier. It is late enough in the  
21 day. I won't repeat what I said earlier.

22 Q Turn to DKS N 28984.

1 A 84?

2 Q Yes. The reference to conference with Seth  
3 Ward regarding purchase from Brick Lile.

4 A 11/16/85.

5 Q 11/14.

6 A It is hard to read. Okay, 14.

7 Q Isn't that evidence that Mrs. Clinton was  
8 involved in more than legal research related to the  
9 wet/dry issue and the brewery?

10 A It is not very strong evidence. This is a  
11 month and a half after the acquisition. It certainly  
12 doesn't connect her to the acquisition. It is too  
13 late.

14 Q It would connect her to the backdated  
15 letter?

16 A Conceivably could. I think I addressed  
17 that in the report and said that ultimately that's  
18 not a theory of which you would have much hope of  
19 success.

20 MR. COLE: I would also like to refer you,  
21 Mr. Ericson, to the DKS N 029010, which appears to be  
22 the bill of the client that reflects that particular

1 set of time entries, if you turn a few pages.

2 BY MR. GIUFFRA:

3 Q Mr. Ericson --

4 MR. COLE: Excuse me, Mr. Giuffra, could I  
5 ask one question.

6 THE WITNESS: One at a time here, guys.

7 MR. COLE: If you look four lines up from  
8 the bottom of the textual description in that bill,  
9 you will see a phrase that states "conferences with  
10 Seth Ward regarding purchase from Brick Lile and  
11 proposed industrial development on site."

12 THE WITNESS: Yes.

13 MR. GIUFFRA: Would that time entry  
14 indicate that the discussions with Mr. Ward were with  
15 respect to the development of the property, as  
16 opposed to the initial acquisition?

17 THE WITNESS: Well, they might, but I don't  
18 think that is terribly compelling one way or the  
19 other. This bill, the page you referred me to, is  
20 the bill that came out the end of January, and it  
21 includes a lot of time, apparently going back to  
22 September or thereabouts presumably, including the

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1 time shown on the page you were looking at, 484. You  
2 will note it says "conferences," plural. I'm not  
3 sure in putting together the bill several time sheet  
4 entries weren't telescoped into one. I'm not  
5 disagreeing with your exegesis, if you will, but I am  
6 not saying it conclusively proves the point.

7 MR. COLE: But you would agree that  
8 Mrs. Clinton was the billing partner and presumably,  
9 based on the information we have prepared this bill,  
10 so the manner in which she described her work in the  
11 bill would be some evidence of what she did?

12 MR. GIUFFRA: That calls for speculation on  
13 his part.

14 MR. COLE: Excuse me. You haven't asked  
15 him any questions calling for speculation today. I  
16 didn't say it would be determinative. I just said it  
17 would be evidence.

18 THE WITNESS: I agree that she was the  
19 billing partner. I kind of lost the last half of the  
20 question. I'm sorry. Do you want to have her read  
21 it back?

22 MR. COLE: I will repeat it. The last half

1 of the question was that as the billing partner and  
2 person who prepared this bill, the way she described  
3 her work in this bill would be evidence of what she  
4 did on this matter. Do you agree with that?

5 THE WITNESS: Some evidence, yes. Again,  
6 not conclusive, but some evidence. What I would  
7 suggest -- maybe I shouldn't here -- is that we try  
8 to find the other time sheet entry that brings us to  
9 two or more conferences and see when that was and who  
10 was involved and so on, and that may strengthen or  
11 weaken your inference. I have no idea. That's one  
12 way to look at it.

13 BY MR. GIUFFRA:

14 Q Mr. Ericson, if you had evidence that  
15 either Mrs. Clinton or Mr. Hubbell drafted the  
16 backdated September 24, '85 letter, how would that  
17 change your conclusion that it was not cost-effective  
18 for the RTC to bring a lawsuit against the Rose Law  
19 Firm?

20 A Well, you haven't correctly stated the  
21 whole of our conclusion. You stated a part of it. I  
22 certainly say it is not cost-effective. I also said

1 I didn't think there was a claim. But that may be  
2 just a quibble at this point.

3 If there were evidence that Mr. Hubbell, or  
4 convincing evidence that Mr. Hubbell or Mrs. Clinton  
5 drafted the September 4, 1985 letter, I think you  
6 would be much farther along the road towards having a  
7 case that a member of the Rose Law Firm had rendered  
8 substantial assistance to this transaction.

9 Now whether you would really have the  
10 knowledge element buttoned up regarding specific  
11 intent here, it is -- I'm not sure you would have  
12 it. You would be --

13 Q Could you survive a summary judgment  
14 motion?

15 A Your odds of surviving a motion would go  
16 way up, I think.

17 Q Do you think you could?

18 A I hate to put a number on it, but I think  
19 your odds would be -- you would have some reasonable  
20 odds of surviving a motion. Whether you could  
21 convince a jury ultimately, I don't know. But I  
22 think your odds of surviving a summary judgment

1 motion would be considerably improved.

2 Q If there was evidence that Mrs. Clinton had  
3 knowledge of Rule(5)(c), how would that change your  
4 calculation with regard to whether it would be cost  
5 effective to bring a lawsuit against Rose?

6 A Again, you have referenced this as cost  
7 effective. I am a little confused. It is ambiguous  
8 to me.

9 Q If you had evidence that Mrs. Clinton had  
10 knowledge of Rule(5)(c), would that be sufficient to  
11 survive a motion for summary motion if you brought an  
12 aiding and abetting case against Rose?

13 A The only thing I have that I don't have now  
14 is evidence that she knows of the rule. Very  
15 marginal.

16 Q The big thing would be the September 24  
17 letter?

18 A I think that's a bit far more significant,  
19 yes. The point I was trying to make, perhaps not  
20 clearly enough earlier, is that mere knowledge of the  
21 rule, in and of itself, I don't think gets you very  
22 far. You need to link it up with some purposeful

1 conduct where you have a reasonable argument that the  
2 person was acting with specific intent to do  
3 something the person knew to be unlawful.

4 Q If they knew of the rule and didn't ask  
5 questions about whether the transaction complied with  
6 the rule, that would at least show negligence; right?

7 A Knew of the rule, didn't ask questions. If  
8 they are on notice of facts that would show the rule  
9 to have some relevance to the transaction.

10 Q If Mrs. Clinton was acting as the partner  
11 who was handling this acquisition and she knew about  
12 the rule and didn't ask questions about the rule --

13 A We are getting awfully contrary to fact.  
14 The first part of your question there, if she was the  
15 partner handling this transaction, there is no  
16 evidence to that effect.

17 Q She was the billing partner?

18 A Yes, but that is a far cry from saying she  
19 is the partner handling the transaction. There is no  
20 evidence of that.

21 Q Let's suppose Mr. Thrash was aware of 5(c),  
22 he was the partner who handled the transaction, at



1 least initially for Rose. If he didn't ask any  
2 questions about whether the transaction complied with  
3 5(c) and he knew about it, would that be the basis  
4 for a negligence action against Rose?

5 A Again, this is not something I considered  
6 as part of my analysis. You are asking me to think  
7 fast here and now. I think I can't improve on my  
8 previous answer, which is that I'm not sure.

9 Q Let's focus on page 90 of your report. You  
10 say "on balance, it must be allowed that the case for  
11 arguing that Mrs. Clinton or Hubbell wrote this  
12 letter," meaning the September 24 letter "is very  
13 weak." Correct?

14 A Uh-huh, that's what it says.

15 Q You stand by that conclusion, am I correct?

16 A Sure.

17 Q Now, earlier in your report, you indicate  
18 that Mr. Ward is internally inconsistent with his  
19 testimony; right?

20 A I pointed out a number of examples of that,  
21 yes.

22 Q And he was Hubbell's son-in-law and

1 presumably --

2 A He was his father-in-law.

3 Q He was his father-in-law. Presumably that  
4 fact could be used to impeach Mr. Ward; right?

5 A The fact that he is his father-in-law?

6 Q Yes. Family relationship.

7 A Yes. I mean --

8 Q And the fact that he was the beneficiary,  
9 that Ward was the beneficiary of the transaction;  
10 right?

11 A Well, I think there are a number of grounds  
12 on which Mr. Ward can be impeached. That is  
13 certainly one of them.

14 Q How would you impeach Mr. Ward at trial?

15 A There are a number of inconsistencies in  
16 his testimony. You bring them out and show that from  
17 one occasion to another, he quite frequently changes  
18 his testimony.

19 Q Plus you will show that he was the  
20 beneficiary of this transaction; right?

21 A Yes.

22 Q And then you would show that he had a

1 family relationship with Hubbell?

2 A Yes.

3 Q Those would be probably the three theories  
4 you would use?

5 A Those are three good ones, yes.

6 Q Let's look to Mr. Hubbell.

7 A Having said that, though, I don't think you  
8 should regard Mr. Ward as a witness who is just in  
9 tatters in front of you or something. You have seen  
10 him. I haven't. I read the transcript. He is a  
11 pretty resourceful and to some extent, engaging  
12 character.

13 As I said earlier today, and as I say in  
14 the report, while he is clearly inaccurate in some  
15 areas, chronology being a particular weak point, I  
16 don't know that this is one of these instances where  
17 you can say wrong about something, wrong about  
18 everything. I think with respect to a number of  
19 points in his testimony, it rings true.

20 Q Mr. Ward's testimony is that he drafted the  
21 letter; right? That's what he said. That's what he  
22 told us.

1 A He has said that. He has been a bit  
2 wishy-washy about it.

3 Q You say in your report the letter was  
4 drafted by a lawyer?

5 A I said it looks that way.

6 Q There is an inconsistency between Mr. Ward  
7 and your own conclusion?

8 A Yes. Although, as I point out, Ward, while  
9 not a lawyer, had some training as a real estate  
10 broker, and as I think Hubbell suggested he picked up  
11 a smattering of legalese as a consequence.

12 MR. COLE: He also took offense at the  
13 suggestion by some Senator that he would not be  
14 capable of drafting this letter.

15 THE WITNESS: He certainly did.

16 MR. GIUFFRA: There was no Senator at the  
17 deposition.

18 MR. COLE: He took offense to the statement  
19 at a public hearing that he had seen on television.

20 BY MR. GIUFFRA:

21 Q You thought the letter was drafted by a  
22 lawyer. Are you aware that a copy of this letter was

1 found in Mr. Hubbell's files?

2 A I'm aware a copy was produced to us by the  
3 Rose Law Firm.

4 Q Are you aware that a copy was found in  
5 Hubbell's files?

6 A I can't remember whether I know that or  
7 not.

8 Q Would that change your analysis if you  
9 learned of that fact after you had done the report?

10 A I'm trying to think whether I knew that. I  
11 think I knew that. So I don't think it would  
12 change --

13 Q Maybe a document among the documents you  
14 got from the Rose Law Firm after February?

15 A I don't think so. I can't give you the  
16 Bates number from memory, obviously. I think it is  
17 RIC 109 something or another. I think it is one we  
18 got quite a bit in advance of the completion of  
19 either of these reports. It is my further  
20 recollection that at some point I had a discussion  
21 with Alden Atkins about that letter and the source of  
22 it and here is where I'm a little vague.

1 What you say about it coming from Hubbell's  
2 files doesn't strike me as news. I think that is  
3 something I knew all along. I'm not positive of  
4 that.

5 Q You are aware of the fact that Hubbell's  
6 secretary admits to typing it?

7 A Yes.

8 Q We have the billing records which show  
9 conversations between Mrs. Clinton, Hubbell and Ward?

10 A In November, yes.

11 Q We have Ward's testimony saying it could  
12 have been done weeks later, so the letter could have  
13 been done in November?

14 A Yes.

15 Q We also know Hubbell is in jail for  
16 basically lying and stealing from his partners?

17 A That's right.

18 Q In light of all that, do you still stand by  
19 your conclusion that the evidence that Clinton or  
20 Hubbell wrote the letter is very weak?

21 A Yes. I spent 20 pages discussing this in  
22 the report. I can't improve on what I said there. I

1 think it is very weak. You have stuff you can argue  
2 about to the contrary, but you would lose.

3 Q Do you think you would survive a summary  
4 judgment motion based on the evidence you have right  
5 now?

6 A Not very likely, no.

7 Q Why not?

8 A I don't think it meets the test of Rule  
9 56.

10 Q The fact that the letter was found in  
11 Hubbell's files, that his secretary admitted to  
12 typing it, that the letter was probably not written  
13 by Ward, that it had to have been written by a  
14 lawyer, that there are phone conversations between  
15 Clinton, Hubbell and Ward, that Ward himself was  
16 inconsistent with what he says and that Hubbell is in  
17 jail for lying and stealing from his partners is not  
18 enough to survive Rule 56?

19 A You might, but I would not give you very  
20 good odds.

21 Q The only testimony you would have to the  
22 contrary are the people who would have an interest in

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1 saying they didn't write the letter? That's the only  
2 testimony to the contrary.

3 A Hubbell, Ward and Mrs. Clinton.

4 Q Is there any other evidence to the contrary  
5 besides Web Hubbell and Mrs. Clinton's denial?

6 A I don't recall. It is discussed for 20  
7 pages in my report. I stand by what I say in there.  
8 It is an argument. That's why I spent that much time  
9 on it. But I think it is a loser.

10 MR. COLE: Off the record.

11 (Discussion off the record.)

12 BY MR. GIUFFRA:

13 Q Am I not correct, sir, that in your  
14 analysis on this point, which you will agree that it  
15 is an important point?

16 A Yes, it is an important point.

17 Q You are relying solely on the testimony of  
18 the people who had an interest in saying they didn't  
19 write the letter: Mrs. Clinton, Hubbell and  
20 Hubbell's father-in-law?

21 A No, I wouldn't agree with that. I think  
22 I'm looking at all the facts and circumstances and



1 there are a lot of them that are enumerated over 20  
2 pages of the report. I place a lot of reliance on  
3 documentary evidence and other things. I don't think  
4 I'm relying solely on their testimony, because I  
5 recognize that obviously they have an interest, as  
6 you say. I think you put the whole story together  
7 and it doesn't work out too well.

8 Q What documentary evidence?

9 A I'm not going to sit here and summarize 20  
10 pages for you or attempt to dissect it. I spent a  
11 long time discussing it in the report. It speaks for  
12 itself. I think we are just -- this is sort of  
13 breaking down into nothing but argumentative  
14 questions.

15 Q It appears that the documentary evidence  
16 you rely upon is the fact that Ward took a trip to  
17 France during some period between October 4, '85 and  
18 November 14, '85.

19 A Something I cite.

20 Q Any other documentary evidence that you can  
21 recall?

22 A I don't remember any sitting here, no.

1 Q The reason, so we have it one more time,  
2 the September 24 letter would be significant to  
3 making out a case is that it is a document that is  
4 pretty critical to the transaction that allowed  
5 Mr. Ward to purchase part of the property; right?

6 A "Pretty critical"? It is important to  
7 making the case, at least the case I tried to  
8 outline, the case we were looking at.

9 Q Why is it important?

10 A Because if someone from the Rose Law Firm  
11 had written it and did so with knowledge of  
12 Rule(5)(c) and did so with knowledge that -- but for  
13 the structuring of the transaction with Ward the way  
14 it was, there would be a violation of Rule(5)(c); you  
15 could make an argument that you satisfied all the  
16 elements of an aiding and abetting claim.

17 Q Why is that?

18 A You would have the knowledge and I think  
19 you would have --

20 Q What would be the knowledge?

21 A You need the knowledge of the rule and of  
22 the violation of the rule. We focused a lot on the

1 rule and less so on the violation. Simply to know in  
2 the abstract there is this Rule(5)(c) doesn't get you  
3 very far.

4 Q What would be the evidence, assuming  
5 everything else stays the same except for the  
6 knowledge, writing the letter, the fact that someone  
7 wrote the letter, what would be the knowledge of the  
8 rule, in your mind, as a result of your  
9 investigation?

10 A What would be the evidence of knowledge of  
11 the rule?

12 Q Yes.

13 A The only evidence I'm aware of is the  
14 evidence we discussed earlier to the extent it came  
15 up with respect to the broker/dealer application.

16 Q You would rely on that evidence and then  
17 you would rely on -- then the knowledge of the  
18 violation would be the fact of what?

19 A You would have to know that the transaction  
20 would violate Rule(5)(c). Let me put it this way:  
21 That the lawyer, the hypothetical lawyer who is  
22 aiding and abetting would have to know that the

1 acquisition of Castle Grande, if it were just a  
2 straight acquisition by Madison Financial to retire  
3 the property, would constitute a violation of  
4 Rule(5)(c).

5 Q How would the fact that someone had written  
6 the September 24 backdated letter establish --

7 A It wouldn't.

8 Q You seem to be backtracking a little bit.

9 A No. You are just misunderstanding. I  
10 think if you had such knowledge and you wrote the  
11 letter, then you would be getting close to a case.  
12 But you have to satisfy all the elements.

13 Q Let's turn to another subject.

14 Prior to the discovery of the Rose Law Firm  
15 billing records, the extent of Mrs. Clinton's contact  
16 with Ward was, what, limited?

17 A Say that again. I think you didn't say  
18 what you wanted to say.

19 Q Prior to the discovery of the Rose Law Firm  
20 billing records in January of '96, the only evidence  
21 of contacts you had between Mrs. Clinton -- you  
22 didn't really have any evidence of contacts between

1 Mrs. Clinton and Mr. Ward?

2 A I don't remember that we had nothing. But  
3 we certainly didn't have very much.

4 Q You had the January bill and that really  
5 doesn't indicate communications?

6 A It doesn't indicate communications.

7 Q Who spoke to whom, right?

8 A This may be a minor point, but after  
9 December 21, we had evidence that Mrs. Clinton had  
10 prepared that May 1, 1986 option that Seth Ward had  
11 signed. So between December 21 and January 5 or 6,  
12 whatever it is, we had that additional piece of  
13 evidence which suggested some contact between  
14 Mrs. Clinton and Ward, but I don't think that is the  
15 thrust of your question.

16 The thrust of your question is before the  
17 billing records do we know much about contacts  
18 between Mrs. Clinton and Ward. I would agree with  
19 you, no, we do not.

20 Q In her interrogatory answers to the RTC,  
21 had Mrs. Clinton raised the issue of her contacts  
22 with Ward in responding to those interrogatories?

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1 A Did she raise them?

2 Q She didn't indicate that she had had a lot  
3 of communication with Ward in her RTC  
4 interrogatories?

5 A I don't recall that. I'm not sure if she  
6 was asked.

7 Q With regard to Mrs. Clinton's  
8 communications with Ward, we know that Donovan did  
9 not start his legal research until December 30, '85;  
10 right?

11 A 30, did you say?

12 Q Yes.

13 A Sometime around then.

14 Q Her communications with Mr. Ward all  
15 occurred prior to that time?

16 A They didn't all occur prior, but there were  
17 a number of them prior to that.

18 Q There were communications, if you turn to  
19 page 98 of your report --

20 A Yes, there they are.

21 Q As you state in your report, it is  
22 Mrs. Clinton's testimony that these conversations all

1 related to the legal research; right?

2 A I'm not sure she phrased it in terms of the  
3 legal research or whether she said all related to the  
4 sewer and water and the wet/dry issues. But that's  
5 the thrust of her testimony, yes.

6 MR. COLE: Which I would note is consistent  
7 with the language in the statement that I showed you  
8 as I read it. I realize it is subject to  
9 interpretation, but it might be consistent.

10 BY MR. GIUFFRA:

11 Q Mr. Thrash wasn't working on either of  
12 those issues; right?

13 A I don't think Thrash recorded any time  
14 after early October, my recollection.

15 Q She billed time communicating with  
16 Mr. Thrash on November 26, '85 and she spoke to  
17 Hubbell on several occasions.

18 A Yes. That's what this indicates on page  
19 98, yes.

20 Q And she also spoke with Dover?

21 A Yes.

22 Q Now, page 99, you say "the only other

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1 possibility that has been suggested in the Senate  
2 hearings is the third and final version of the Seth  
3 Ward November 24th letter being drafted late,"  
4 meaning sometime in the period mid to late November,  
5 early December?

6 A Yes.

7 Q And you reach the conclusion that the  
8 evidence to the contrary is far from compelling.

9 A Uh-huh.

10 Q Other than relying upon Mrs. Clinton and  
11 Mr. Ward, what else do you have?

12 A The things I discussed between pages 70 and  
13 90.

14 Q All you discussed there is Clinton's  
15 testimony?

16 A I don't think that is right, but it speaks  
17 for itself.

18 Q How do you explain the fact that Donovan,  
19 just in purely our terms -- strike that.

20 Normally, you would agree that when an  
21 associate does research for a partner, the associate  
22 will bill far more time than the partner will;



1 right?

2 MR. COLE: I have had some partners for  
3 whom that was not the case.

4 MR. GIUFFRA: I guess you didn't do a good  
5 enough first draft, Lance.

6 THE WITNESS: My experience, I would have  
7 to say my experience is varied in that regard. It  
8 doesn't always prove to be that way.

9 BY MR. GIUFFRA:

10 Q If you accept Mrs. Clinton's version, that  
11 would mean that this would be one of these examples  
12 in which the partner billed as much time as the  
13 associate to the legal research project?

14 A I think that's right. I don't recall for  
15 sure. The best of my recollection, she had as much  
16 or more time than Donovan did on those projects.

17 Q That's not the normal?

18 A I don't think you can say it is abnormal.  
19 Certainly matters I worked on there are, somewhat to  
20 my chagrin, plenty of examples of me putting in more  
21 time than my associates and perhaps my partners would  
22 say just too much time. I don't think you can say it

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1 is abnormal.

2 MR. COLE: I don't think that even  
3 accurately characterizes the billing records because  
4 the accurate way to state it is that she billed as  
5 much or nearly as much time on the matter, not  
6 necessarily on the legal research. Because there are  
7 other things on the matter other than legal research,  
8 communications with client, meetings with the  
9 client. A number of other things are noted. The  
10 records speak for themselves. We don't have to  
11 debate them.

12 BY MR. GIUFFRA:

13 Q You would agree the missing 14-1/2 hours is  
14 obviously something of a mystery, that there is no  
15 explanation for what time Mrs. Clinton may have  
16 billed?

17 A I don't agree there is no explanation. She  
18 has offered an explanation, but it is sort of a  
19 mystery to me. There is not clear documentary  
20 evidence as to what happened to that. But she has  
21 offered an explanation.

22 Q Her explanation is what?

1 A It is that it is time that was work that  
2 was performed after whatever the date was in January  
3 but didn't get loaded into the computer in time to  
4 get the bill out on January 31.

5 Q That means her last entry on her records is  
6 12/26; right? You can see it on page 98 of your  
7 report.

8 A She had one on January 7, I think. Looking  
9 at page 98, I see one on January 7.

10 Q Her testimony would be she did all of this  
11 work in January; right? Between the 7th of January  
12 and the end of January?

13 A I think that was her testimony, yes.

14 Q That would be more time than Mr. Donovan  
15 spent during the same period?

16 A I think that's right. I don't recall for  
17 sure. But the records speak for themselves with  
18 respect to that.

19 Q Now, you state on page 107 of your report  
20 that if somebody was involved in a fraud or a  
21 deliberate violation of Rule(5)(c), they wouldn't  
22 write the time down; right?

1 A I state something to that effect. I'm not  
2 sure that's exactly the way I put it but let me  
3 look.

4 (Witness examined the document.)

5 You paraphrased what I said. I think you  
6 lose at least some of the nuance. The middle of page  
7 107, there is a statement on that subject and it  
8 speaks for itself.

9 Q What about the fact -- if someone wanted to  
10 conceal what they had done, wouldn't they just lop it  
11 on to the bill at the very end as was done here?

12 MR. COLE: I'm not following the question.

13 MR. GIUFFRA: We will strike it and save it  
14 for the hearing.

15 MR. COLE: The theory is time added to a  
16 bill in January is indicative of participation in a  
17 conspiracy in September and October? Is that the  
18 theory you are advancing?

19 MR. GIUFFRA: No. If someone was involved  
20 in wrongdoing in November or October or December and  
21 they didn't want to write down exactly what they had  
22 been doing, they might just add the time at the

1 end -- on to a bill at the very end.

2 BY MR. GIUFFRA:

3 Q Now, you say on page 125 "it is curious  
4 that Mrs. Clinton, a litigator, would have prepared  
5 an option." If it is curious, how does that fit into  
6 your analysis?

7 A Well, I think it is discussed there.

8 Q Why did she draft the option?

9 A I think it is discussed on page 130.

10 Q Let me direct your attention to 163.

11 A Yes.

12 Q Five paragraphs down.

13 A Yes. The one that starts out "the Clintons  
14 are not all cronies, like R.D. Randolph."

15 Q Yes. Who drafted that paragraph?

16 A I did.

17 Q Why is this statement in your report?

18 A I felt it was something worth saying. I  
19 drafted it.

20 Q Do you think it is accurate?

21 A Yes. I wouldn't put it in if I didn't  
22 think it was accurate.

1 Q What is the basis for the statement? It is  
2 not cited to anything.

3 A No. It is sort of my overall reading of  
4 the evidence, after working on this for the better  
5 part of two years or so at this point. I tried to  
6 take a step back and look at the evidence as a whole  
7 and say well, what sort of case do we have here. If  
8 somebody were to argue claims that I don't find at  
9 all persuasive, do I think they would get anywhere  
10 with a conspiracy theory of this type. I was trying  
11 to sketch out why, in my view, I just don't think  
12 that dog will hunt, as they say.

13 Q You ignore the fact that McDougal had been  
14 Clinton's economic adviser when he was governor?

15 A I certainly don't ignore that.

16 Q You don't reference that in the paragraph.

17 A No.

18 Q Or that they had had a number of business  
19 deals together.

20 A Two. I knew that.

21 Q That McDougal had given a fundraiser for  
22 Clinton.

1 A I knew that.

2 Q There had been a number of message slips  
3 indicating telephone calls between the two.

4 A I knew that. I looked at those.

5 MR. COLE: Over 12 years?

6 THE WITNESS: Yes. I think this is an  
7 accurate statement. You may reach a different  
8 conclusion, but I think this is accurate and I think  
9 this is the way a trier of fact would look at it  
10 too.

11 MR. GIUFFRA: Let's turn to the Whitewater  
12 report.

13 THE WITNESS: If we are going to switch  
14 subjects here, indulge me for one second.

15 (Recess.)

16 BY MR. GIUFFRA:

17 Q In terms of preparing the Rose supplemental  
18 report, were you asked to do so by the RTC?

19 A I don't have a specific recollection, but I  
20 would think so. You mean as opposed to the FDIC or  
21 as opposed to volunteering that I would like to do  
22 one?

1 Q Yes.

2 A Yes, both? My question was compound.

3 Q You think someone, your client, either the  
4 RTC or the FDIC depending on the point in time -- the  
5 FDIC comes into effect when, January 1?

6 A Yes.

7 Q So it may well have been the FDIC, because  
8 the Rose billing records were discovered on January  
9 4th. Did someone at either the RTC or FDIC direct  
10 you to prepare the supplemental report?

11 A I don't have any firm recollection. The  
12 best of my recollection, we had some discussion, the  
13 upshot of which was an agreement that, because we  
14 extended the statute via the tolling agreement and  
15 because we were going to get in some more evidence,  
16 that we should prepare some sort of supplemental  
17 report at the end of that process. We would need to  
18 bring it to closure, whatever. But there was some  
19 sort of discussion. I don't remember someone calling  
20 me and saying you will prepare a supplemental  
21 report.

22 Q Do you recall who participated in that



1 discussion from the RTC or FDIC?

2 A No.

3 Q General counsel?

4 A No, nobody on that level. It would have  
5 been Mark Gabrellian or Jim Igo or one of their  
6 colleagues or something. It wasn't anybody above,  
7 say, Mark's level.

8 Q In terms of the actual drafting of the  
9 supplemental report, that would have been a process  
10 you would have shown drafts of that to the RTC, or in  
11 this case the FDIC; right?

12 A I showed one or two to the FDIC, yes.

13 Q And they would have commented upon your  
14 drafts; right?

15 A Yes. There weren't a lot of drafts but  
16 there were some.

17 Q In the course of drafting the Whitewater  
18 report or the two Rose reports that you were in  
19 charge of, were there any cases in which the FDIC or  
20 RTC asked you to remove paragraphs or sentences from  
21 the report?

22 A Oh, I think so, yes.

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1 Q For example, you changed the title of the  
2 Whitewater report at the suggestion of the RTC?

3 A Yes. That is a change.

4 Q To say these reports were strictly the work  
5 of Pillsbury, Madison & Sutro would not be correct?

6 A I don't know that I agree with that. The  
7 buck stopped somewhere, and as far as I am concerned,  
8 the buck stops with our firm. Our name went on it  
9 and we had to be satisfied with the finished  
10 product. If we weren't, we wouldn't have put our  
11 name on it.

12 The fact that we discussed it with our  
13 client and there was an exchange of views and so on I  
14 don't think makes it any less our work. It is a  
15 funny view of the process of writing to suggest you  
16 have to shut yourself in a closet and not speak to  
17 anybody.

18 Q But you didn't shut yourself in a closet.  
19 You did accept comments and make changes in response  
20 to suggestions from people at the RTC and FDIC?

21 A Yes.

22 Q You identified one conversation with

1 Mr. Kendall where he gave you factual information.

2 A Yes.

3 Q Can you think of any others?

4 A Where he gave me factual information?

5 Q Yes.

6 A No, I can't remember any others. I'm not  
7 saying for sure there weren't, but I can't remember  
8 any.

9 Q Any instances in which Alden Atkins gave  
10 you factual information?

11 A We talked a number of times, but ultimately  
12 I don't think I used anything he said unless it was  
13 reduced to writing. There were a couple instances,  
14 and you have seen them, where I sent him fairly long  
15 lists of written questions and he wrote replies. I  
16 certainly cited those written replies.

17 There may be -- I can't say there isn't a  
18 stray reference to a phone call I had with him.  
19 Aside from the written replies, I, by and large, did  
20 not rely on things he said.

21 Q Why was that?

22 A I just didn't feel that comfortable relying

1 on an oral statement of somebody I regarded as  
2 essentially adverse counsel.

3 Q You never showed drafts of these reports to  
4 anyone at either Vinson & Elkins or the Williams  
5 Connolly; right?

6 A No, of course not.

7 Q Drafts would have only gone to the FDIC?

8 A They went only to the client.

9 Q You don't know whether the client shared  
10 the drafts with anyone outside of those agencies, do  
11 you?

12 A I don't know for a fact that they didn't,  
13 but I would be surprised to find out.

14 Q Do you know whether anyone at the client  
15 discussed anything contained in drafts of these  
16 reports with anyone outside of the agency?

17 A I certainly have no knowledge to that  
18 effect. I would be surprised to hear they did.

19 MR. GIUFFRA: Lance, you say you want to do  
20 about 10 minutes now?

21 MR. COLE: Yes, I think about 10 minutes.

22 MR. GIUFFRA: Go ahead.

## EXAMINATION

BY MR. COLE:

Q Mr. Ericson, I would like to go back to a few of the points that Mr. Giuffra has just covered. I will try to be as brief as possible. If I could direct you back to page 5 of your supplemental Rose Law Firm report.

A Okay.

Q Mr. Giuffra asked you a number of questions regarding the retention of the Rose Law Firm and the statement on page 5 that says "the recollections of Mrs. Clinton and Massey are consistent in broad outline although discrepancies emerge in the detail."

I am not going to ask you any more hypothetical questions about that, but I do want to ask you about some new evidence that the Committee has obtained since the time this report was drafted.

What I would like to ask you about is some testimony the Committee received from David Knight on April 26 of this year in deposition. I will read into the record the evidence that Mr. Knight provided

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and I would like to ask you some questions about it. If you need to take a moment to look at the transcript you certainly can do so.

This is testimony concerning the lunch that Mr. Knight and Mr. Massey had with Mr. Latham which we discussed earlier in the deposition.

"Question: Do you recall at the lunch anyone bringing up or discussing the prior work the Rose Law Firm had done for Madison Bank & Trust?

"Answer: I'm fairly certain that didn't happen. I'm not sure I was even aware of any prior work the Rose Law Firm had done. I don't believe I was.

"Question: So Mr. Latham didn't, for example, mention the fact that there were unpaid bills at the Rose Law Firm that Madison Bank & Trust had not paid?

"Answer: No, he did not. I would have to go back and correct. I did know at that point there had been -- immediately prior to that lunch I had learned that there had been some kind of work, litigation work and there had been some sort of

1 problem with billing, but I didn't really have any  
2 information about what that work related to so I  
3 guess I did know that there had been some work that  
4 the Rose Law Firm had done, probably out of the  
5 litigation section, but it was nothing I had any  
6 firsthand knowledge of and we did not discuss that in  
7 the lunch with Latham.

8 "Question: Who told you about that?

9 "Answer: I had -- and this is a -- I'm  
10 trying to get this right. It is kind of a vague  
11 recollection because it was a very short  
12 conversation, but my recollection is that I had  
13 mentioned I had gone into Joe Giroir's office and  
14 mentioned to him that Rick and I were going to lunch  
15 with John Latham and had been a student in my class  
16 and was President of Madison and we were going to  
17 have lunch with him and see if there was a  
18 possibility of some business there, and he mentioned  
19 to me there had been some type of an argument or  
20 dispute over fees and I think he said it was with  
21 somebody in the litigation section about a past  
22 representation of Madison and he thought it was fine

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1 to go ahead and have the lunch. But if anything came  
2 out of it and we decided we wanted to undertake a  
3 representation on something, that we needed to -- I  
4 needed to look into that and make sure there wasn't a  
5 problem there.

6 "Question: Did he tell you who he had to  
7 talk about that?

8 "Answer: I don't believe so.

9 "Question: Did he tell you whether the  
10 bill had indeed been paid by that time?

11 "Answer: I think what I told you is really  
12 my total recollection of that conversation and I  
13 didn't get into it any more detail because the  
14 context of the conversation was, well, something  
15 comes up from the lunch then look into it and nothing  
16 ever came from the lunch, so I never looked into it,  
17 so I never got any more information on it."

18 That's at pages 16 through 18 of  
19 Mr. Knight's April 26, 1996 deposition. If you would  
20 like to refer to that, please do so.

21 My question is whether that information  
22 that the Committee obtained from Mr. Knight about



1 discussion with Mr. Giroir concerning a prior dispute  
2 over unpaid legal bills would change your conclusion  
3 or your statement on page 5 of your report concerning  
4 the recollections of Mrs. Clinton and Mr. Massey  
5 about the circumstances of the retention.

6 (Witness examined the document.)

7 If that question is not clear, what I'm  
8 getting at is that you indicated that the  
9 recollections of Mrs. Clinton and Massey are  
10 consistent in broad outline, although discrepancies  
11 emerge in the detail. I'm asking you whether this  
12 new information is consistent with that broad outline  
13 that you referred to.

14 A I think so, but it is late in the day and I  
15 haven't heard this before, but it is sort of a bit of  
16 a new point of view on this lunch. I think it is  
17 consistent in broad outline. Nothing about it I find  
18 particularly surprising.

19 Q And nothing about it that -- I realize you  
20 are seeing this for the first time with no  
21 opportunity to really get a careful study. But is  
22 there anything there that you would view as

1 inconsistent with the broad outline of the  
2 recollections of Mrs. Clinton and Mr. Massey?

3 A Not really, no.

4 Q If I could direct your attention to page 18  
5 of your supplemental Rose report, merely for the  
6 purposes of referencing the testimony that  
7 Mrs. Clinton gave you in the February interview that  
8 you conducted. In particular, the first full  
9 paragraph on that page beginning "I believe it was  
10 Vince Foster who came to me," et cetera. Do you see  
11 the reference?

12 A I see it, yes.

13 Q If you would read that paragraph, I would  
14 ask whether there is anything in the testimony that  
15 Mr. Knight has now provided to this Committee that is  
16 inconsistent with Mrs. Clinton's testimony as  
17 reported here.

18 (Witness examined the document.)

19 A Again, I don't think so.

20 Q And you are aware, are you not, that  
21 Mr. Foster had been the litigation partner  
22 responsible for the Bank of Kingston litigation?

1 A Yes, I know that.

2 Q You know that?

3 A Yes.

4 Q And in particular, I raise that because

5 Mrs. Clinton's testimony that Mr. Foster may have  
6 come to her concerning the prior dispute with the  
7 billing would be consistent with the fact that  
8 Mr. Foster had been the billing partner, and that  
9 Mr. Knight recalls that Mr. Giroir told him -- "him"  
10 being Mr. Knight -- that some arrangements would have  
11 to be made about the prior billing dispute?

12 A I'm not sure I picked up every nuance of  
13 your question, so let me try to rephrase it in my  
14 answer rather than stumble on something.

15 Q Please do.

16 A You noted that Mr. Foster was the lawyer  
17 principally responsible for the Bank of Kingston  
18 case. I knew that. You noted also that Knight says  
19 he talked to Giroir about the account receivable  
20 relating to that case. If that became some sort of  
21 issue or was some sort of issue at the Rose firm,  
22 yes, there seems to be nothing surprising or that

1 would raise someone's eyebrows about Foster talking  
2 to Mrs. Clinton or anyone else about that account  
3 receivable. That doesn't seem -- I don't see any  
4 inconsistency here.

5 Q Nor do I. I wanted to see if this new  
6 testimony had any impact on your analysis as set  
7 forth in your report.

8 Going back to one. First areas that  
9 Mr. Giuffra covered with you earlier this morning,  
10 which was the cost of the work that ultimately  
11 resulted in the reports that you prepared for the RTC  
12 and the FDIC, I wanted to make sure I understood the  
13 numbers correctly. I want to state for the record  
14 that in asking you this question or these questions  
15 about the cost of these reports, it is not my  
16 intention to suggest or imply that the amount of work  
17 done both in quality and quantity does not justify  
18 the cost. I'm not getting to that at all. I'm just  
19 trying to get the facts as to what the cost was.

20 If I took down your testimony correctly in  
21 my notes, you testified that the work your firm,  
22 Pillsbury, Madison & Sutro did was approximately \$1.9

1 million in billed fees; is that correct?

2 A That's correct.

3 Q And an additional 2- to \$300,000 in bill  
4 disbursements and expenses?

5 A Yes, that's correct.

6 Q And --

7 A Exclusive of the consultants' fees and  
8 expenses, which our bills would be presented as a  
9 disbursement item, but for purposes of my answer in  
10 thinking about them, I break them out.

11 Q I want to get to that in a moment. I want  
12 to get each number on the record.

13 I believe you estimated, or your best  
14 recollection was that the Tucker Allen consulting  
15 fees were approximately \$1.2 million?

16 A Yes. That includes their disbursements.  
17 That's the fees and disbursements, and I have never  
18 broken down and therefore don't know what part of  
19 that is fees and what part of it is disbursements.

20 Q So I'm understanding you correctly, with  
21 your firm's fees and disbursements and the Tucker,  
22 Allen firm's fees and disbursements, we are at a

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1 range of 3.1 to 3.2 million, based on the numbers you  
2 just gave me?

3 A I think that is roughly right, although I  
4 haven't done the arithmetic myself.

5 Q There was a firm called Jordan & Keyes that  
6 did some work as well?

7 A That's right.

8 Q They did a report on Campobello?

9 A And some other reports as well.

10 Q Do you know what Jordan and Keyes fees and  
11 disbursements were?

12 A No, I don't.

13 Q You have no idea?

14 A I have no idea what they were.

15 Q Were there other consultants or  
16 professionals who were engaged on this matter, the  
17 matter defined, other than Pillsbury, Madison &  
18 Sutro, Jordan and Keyes, and Tucker Allen?

19 A Yes. Briefly -- Peterson Consulting  
20 briefly worked, forensic accountants and before them  
21 Gowan Associates.

22 Q So in addition to --

1 A The 1.2 includes all three of those.

2 Q The 1.2 includes all three of those?

3 A Yes.

4 Q But it does not include Jordan & Keyes?

5 A That's right.

6 Q And you don't know --

7 A I don't know what their -- see, the

8 accountants -- the way it works with the RTC and FDIC

9 is that the accountants would send their bills to us

10 and then we would include them in our invoice.

11 Jordan & Keyes didn't do it that way. They had their

12 own budget. They would bill separately. I never saw

13 their budget or bills so I don't know what their fees

14 are. I would know what the accountants fees are

15 because I would, in the first instance, receive their

16 invoices.

17 MR. IGO: I think there was also local

18 counsel, Chuck Hughes down in Tennessee.

19 THE WITNESS: Yes, but they must have

20 billed separately too because I never saw anything

21 from them.

22 BY MR. COLE:

1 Q Am I correct that there was some  
2 litigation, or at least some motion practice in  
3 federal court, I believe in Arkansas, too, to obtain  
4 access to documents in the custody of the Independent  
5 Counsel?

6 A That's correct, yes.

7 Q Was there local counsel engaged for that  
8 work?

9 A I think by and large no, that we -- I'm not  
10 sure we never used local counsel. I think, by and  
11 large, for motion matters, we did not have local  
12 counsel.

13 Q In terms of other costs associated with the  
14 preparation of these reports, does the 2- to \$300,000  
15 in expenses and disbursements that you testified to a  
16 moment ago include costs like duplication of  
17 documents and other costs associated with gathering  
18 evidence and preparing these reports?

19 A Yes.

20 Q Does it include duplication of documents by  
21 the RTC to make available to your firm?

22 A No.



1 Q So that doesn't include internal expenses  
2 of the RTC?

3 A That's right. We wouldn't -- that's their  
4 business.

5 Q I would take it you don't know what the  
6 cost internally to the RTC in connection with  
7 preparing these reports would be?

8 A I would have no idea.

9 Q Turning to the work that Mr. Stephens  
10 did --

11 MR. GIUFFRA: I have a quick question.  
12 Have you been paid on all outstanding bills?

13 THE WITNESS: No.

14 MR. GIUFFRA: Have you been paid anything?

15 THE WITNESS: Yes.

16 MR. GIUFFRA: How much is outstanding from  
17 the RTC and FDIC roughly?

18 THE WITNESS: 100,000, I think, but I'm not  
19 sure.

20 MR. GIUFFRA: Was Tucker Allen direct  
21 billed?

22 THE WITNESS: Billed through us.

1 MR. GIUFFRA: You have been paid on  
2 everything that is owed for Tucker Allen's work?

3 THE WITNESS: I'm not sure that's true. I  
4 think they may be owed some. I'm not sure. Their  
5 bills of recent months haven't been very large. I'm  
6 not sure that they are paid in full. I know we are  
7 not.

8 MR. COLE: Anything else?

9 MR. GIUFFRA: Yes. Have there been any  
10 disputes over fees between yourself and the RTC?

11 THE WITNESS: They have disallowed certain  
12 of our fees. I think that is fairly typical.

13 MR. GIUFFRA: Do you recall approximately  
14 what the dollar amount of the fees they would have  
15 disallowed?

16 THE WITNESS: I think the total is on the  
17 order of \$50,000.

18 MR. GIUFFRA: What were the services that  
19 were billed that were disallowed by the RTC?

20 THE WITNESS: I think, by and large, it was  
21 not services but disbursement items, and I can't tell  
22 you.

1 MR. GIUFFRA: Faxing and copying and things  
2 like that?

3 THE WITNESS: Yes, computer legal  
4 research. But I don't really know. I don't  
5 remember.

6 BY MR. COLE:

7 Q Was there anything unusual, based on your  
8 prior experience of working for the RTC, of the  
9 disallowances?

10 A No. It is pretty much par for the course.

11 Q Back to Mr. Stephens's work. You  
12 testified, I believe, that most of his work occurred  
13 up through the fall of 1994?

14 A Uh-huh, yes.

15 Q And what were the primary matters that he  
16 worked on during the time that he was spending  
17 considerable time on this?

18 A I think I answered that earlier. I think I  
19 listed three or four of them in fairly vague terms.  
20 It is not as if I supervised his work or anything  
21 like that. What I recall is he did a fair amount of  
22 work on the Rule 6(e) petitions. I recall he did

1 work with respect to some of our subpoenas -- in  
2 particular subpoenas to the Rose Law Firm, the first  
3 one -- along with the rest of us, participated in the  
4 early phase when we were all just rolling up our  
5 sleeves and hitting the documents as hard as we  
6 could, especially in February of 1994, trying to  
7 learn what the matter was about to get a feel for  
8 it.

9 I may have mentioned a fourth item. I  
10 don't remember now what it was. I know. Then later  
11 on when it came time to look at and select forensic  
12 accountants, he participated in some of that too.

13 Q I think all of those are clear and you are  
14 correct, you did describe them earlier on the record,  
15 except the Rule 6(e) work. Can you describe briefly  
16 what you referred to as the Rule 6(e) work consisted  
17 of?

18 A Sure. We prepared and filed and ultimately  
19 argued -- I forget whether they were written or oral  
20 arguments. But we prepared filed petitions which are  
21 not unlike motions. It is kind of like a  
22 repetition. There is something that not unlike a

1 complaint followed by something that is like a  
2 memorandum of points and authorities.

3         These are original proceedings docketed  
4 under the grand jury's docket number to gain access  
5 to evidence in possession of the grand jury. Under  
6 criminal Rule 6(e), you have to make a certain kind  
7 of showing to get that access.

8         We put together these papers and file them  
9 and then there ensued some period of negotiation with  
10 the Independent Counsel and then ultimately the court  
11 made a decision on those.

12         Q     Was the issue resolved by a decision of the  
13 court or was it resolved by negotiations between the  
14 parties that was an outcome that was approved by the  
15 court?

16         A     I think, though I'm not positive, that, by  
17 and large, the outcomes were stipulated to. Although  
18 the court did enter orders, which, to the best of my  
19 recollection, the court drafted it as opposed to the  
20 parties.

21         At the latter stages of it, I was not  
22 particularly involved and I kind of lost track of

1 that. The impression I have is there wasn't -- it  
2 wasn't like fully litigated to the bitter end with  
3 the Independent Counsel in opposition to us. I  
4 think, by and large, it was worked out. But the  
5 court still made its own judgment and drafted its own  
6 order and so on.

7         Q     Was Mr. Stephens the lawyer from your firm  
8 who had primary responsibility for that particular  
9 matter, supervisory responsibility?

10         A     Not really. It sort of shifted. The work  
11 started to be prepared under his supervision. Then  
12 there came a time when I sort of took over the  
13 drafting. Then I went on to other things. There was  
14 a time it was sort of divided between Chuck Patterson  
15 and Jay Stephens and then ultimately it ended pretty  
16 much with Chuck, and Ken Goss worked on the second  
17 petition.

18         Q     When in time did that occur?

19         A     Well, we started drafting the first one  
20 early, no later than March of 1994. It wasn't filed  
21 until May or June or something like that. I don't  
22 think it was -- I don't think there was a resolution

1 until October or November. I may be wrong about  
2 that. I think I am wrong about that.

3 I remember there were delays in the  
4 process. It seemed to take longer than I had  
5 expected. But I am kind of vague as to the  
6 chronology. Maybe it is the second order that was  
7 November. I'm probably wrong about that when I said  
8 the first order.

9 But I know the drafting process seemed to  
10 go on for a while. And there was some back and forth  
11 with the client. When we finally filed it and it got  
12 resolved, it took some months.

13 Q Who took the lead in your office in  
14 negotiating with the Office of Independent Counsel?

15 A Chuck Patterson.

16 Q Did Mr. Stephens participate in those  
17 negotiations?

18 A I'm not sure. Maybe to some extent at the  
19 early phase. But as I was not involved in it, I'm  
20 really not sure and I'm not the best one to ask.

21 Q I understand. And you testified that your  
22 first draft preliminary report on Whitewater

1 Development Corporation was completed on or about  
2 October 31, 1994?

3 A That's true.

4 Q And is that at about the same time that  
5 Mr. Stephens's involvement in the matter dropped off  
6 or ceased?

7 A I'm not really sure. I don't think there  
8 was like a date certain in which his involvement  
9 ceased or whatever. It sort of tailed off over a  
10 long period of time. As I testified earlier, he  
11 looked at one or two drafts of that report. So he  
12 did at least that much after October 31. But I don't  
13 recall much else he did after roughly that period.

14 Q At the time that those drafts would have  
15 been prepared and Mr. Stephens would have looked them  
16 over, would your firm have reached at least a  
17 preliminary conclusion that it would not recommend  
18 that claims be pursued on behalf of Madison Guaranty  
19 Savings & Loan relating to Whitewater Development  
20 Corporation?

21 A I'm not quite sure what you are getting  
22 at. Let me try to answer it this way:



1 I was the principal author of the October  
2 31, 1994 draft of the Whitewater report. I think it  
3 is fair to say that report certainly did not  
4 recommend litigation. I don't recall how  
5 conclusively it said don't bring litigation, but it  
6 didn't recommend litigation.

7 Mr. Stephens did not see that draft before  
8 it went out. And I don't think I discussed it with  
9 him in any detail at all, if at all.

10 I think he saw that draft or one of the  
11 next couple of drafts fairly soon after that. We  
12 discussed it at some point after October 31, but he  
13 wasn't really involved in the process of creating  
14 that draft. I don't know if that answers your  
15 question. I'm not sure what you were getting at.

16 Q Let me ask a different way.

17 When Mr. Stephens saw the draft of your  
18 report that you prepared for the first time, is that  
19 when he would have learned that the preliminary  
20 conclusion was not to pursue claims regarding  
21 Whitewater Development Corporation, or would he have  
22 known that previously?

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1 A I can only sort of speculate. I think it  
2 is probably when he would have learned, but I can't  
3 say for sure that we never talked to him before that  
4 about where things were going or what they were  
5 looking like. But I don't recall any such  
6 discussions.

7 Let me say this -- and I don't know if it  
8 helps or not. A lot of the work on that first draft  
9 of the Whitewater report was done in a very  
10 concentrated way throughout the month of October. We  
11 had gotten a lot of documents and extracted a lot of  
12 bank records off of microfilm from other sources and  
13 they all sort of came together. It was a very  
14 intensive period of work, a lot of paralegals and  
15 people from Tucker, Allen, day and night work, going  
16 through those documents, databasing the bank records,  
17 working on the funds tracing and so on. A whole lot  
18 of work came together in a relatively short period of  
19 time resulting in the drafting of that initial draft  
20 of the preliminary report.

21 Again, I can't say that no one in that  
22 month talked to Stephens or described what we were

1 doing or anything else, but I don't have any  
2 recollection of such discussions. We were working  
3 away amongst ourselves in San Francisco, the  
4 accountants and myself and some of my colleagues in  
5 San Francisco. I don't have any great recollection  
6 of doing a whole lot of talking with others outside  
7 of the group of us who were working.

8 Q To your knowledge, was there any connection  
9 between the conclusion that your firm reached that it  
10 likely would not pursue or recommend pursuing claims  
11 relating to Whitewater and the curtailment or  
12 diminishment of Mr. Stephens's work on this project?

13 A No connection at all.

14 Q You testified earlier, if I understood you  
15 correctly, that you did not have personal knowledge  
16 of how exactly it came to be that Mr. Stephens's role  
17 and changed involvement diminished?

18 A That's right. You would have to ask Chuck  
19 Patterson that.

20 Q So far as you knew, it had nothing to do  
21 with the fact that you would not be recommending  
22 claims relating to Whitewater?

1 A Yes, nothing to do. It was not even  
2 closely related in time.

3 Q That's the question I had been trying to  
4 get at in my prior line of questioning.

5 A To answer your question this morning --

6 Q You said fall of 1994. You said your  
7 preliminary report was completed on October 31 of  
8 1994. That's what prompted the question.

9 A I think the parceling out of the work, the  
10 point at which I got Whitewater and so on and Chuck  
11 Patterson said he would take Castle Grande and so on,  
12 that parceling out of the work, that was much, much  
13 earlier. I don't recall when that was. That was  
14 spring or late spring. It was before mid-July,  
15 before roughly that time anyhow. So the two are just  
16 completely unrelated.

17 Q Actually it would have been earlier than  
18 the fall of 1994 when Mr. Stephens role changed, if  
19 I'm understanding your testimony.

20 A Well, what I said was that he worked on  
21 various matters as I described, and his work sort of  
22 tailed off over time, and I believe his work on this

1 engagement ceased more or less altogether at about  
2 the end of '94. The basic dividing up of the work in  
3 which I took charge of certain parts and Chuck  
4 Patterson took charge of the other parts, that was,  
5 as I indicated, in late spring.

6 Q Moving to a different topic. You indicated  
7 that you spoke on the telephone with Jean Lewis a  
8 couple of times.

9 A Yes.

10 Q What did you speak with Ms. Lewis about?

11 A The Rule 6(e) petition.

12 Q Did you ever discuss the criminal referrals  
13 that she had prepared with her?

14 A No. I had one or two very short  
15 conversations with her, and the subject was the Rule  
16 6(e) petition. At one point we thought we were going  
17 to use an affidavit from her in support of the  
18 petition. I forget why we ultimately decided we  
19 didn't need affidavits or whatever. But what we  
20 talked about was sort of the location of documents,  
21 when they had been in Little Rock in various places  
22 and this and that and how they had come into the

1 custody of the Independent Counsel. The only  
2 conversations I ever had with her, and they probably  
3 all total five minutes, related to a possible  
4 affidavit or declaration in support of the 6(e)  
5 petition.

6 Q Generally they were logistical and relating  
7 to document location as opposed to substantive in  
8 your analysis of the issues?

9 A Yes, yes.

10 Q Did you read or review the criminal  
11 referrals that Ms. Lewis prepared?

12 A Yes.

13 Q Were those criminal referrals useful to you  
14 in performing your analysis?

15 A To some extent.

16 Q How so?

17 A They pulled together some basic evidentiary  
18 facts that were useful. They collected some  
19 documents that were useful. They presented a great  
20 many different sort of legal theories or suppositions  
21 that provided kind of hypotheses we could think about  
22 or test or whatever.

1 It was sort of helpful to some extent to  
2 have them to provide some background.

3 Q Did you agree with the conclusions in those  
4 referrals?

5 A By and large, no.

6 MR. GIUFFRA: What was that last question  
7 and answer?

8 (The reporter read the record as requested.)

9 BY MR. COLE:

10 Q When you say "by and large, no," do you  
11 mean that in large measure you did not agree with the  
12 conclusions that she reached as set forth in her  
13 criminal referrals?

14 A I would accept that rephrasal. What I  
15 meant to say is --

16 MR. GIUFFRA: Let's go into this for just a  
17 second. There were, what, 10 criminal referrals?

18 THE WITNESS: Something like that. I was  
19 going to say nine.

20 MR. GIUFFRA: Isn't it nine plus one?

21 MR. COLE: Yes, one initially in --

22 MR. GIUFFRA: Did you review each one of

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1 those criminal referrals?

2 THE WITNESS: At one time or another I am  
3 pretty sure I read each of them. Given the nature of  
4 my work, some were of much more interest to me than  
5 others. Some I probably skimmed once and then set  
6 aside because they dealt with something that wasn't  
7 really within my purview.

8 MR. GIUFFRA: In your answer to Mr. Cole's  
9 question, are you saying that you disagree with the  
10 conclusions stated in all 10 criminal referrals or  
11 just one or two that may be related to work you were  
12 doing.

13 THE WITNESS: I think you make a valid  
14 point, which is, that I didn't put in the time or do  
15 the kind of analysis on a lot of them that would let  
16 me say with any degree of assurance that I agree or  
17 disagree with what she said.

18 MR. GIUFFRA: If I would advise you that  
19 the Independent Counsel based some of the  
20 prosecutions that he is now undertaking on  
21 information he developed by Ms. Lewis, that would be  
22 something you would be interested in?



1 MR. COLE: I would be interested in how  
2 you have that understanding, Mr. Giuffra.

3 THE WITNESS: I don't think we are going to  
4 get anywhere with that line.

5 MR. COLE: If I could continue my  
6 questioning, since Mr. Giuffra wants to focus with  
7 more specificity on this matter.

8 BY MR. COLE:

9 Q Let's focus on the 1992 criminal referral  
10 which you may recall made allegations which, if I may  
11 refer to them as check kiting, would you know what I  
12 meant?

13 A My recollection is a lot of times best --  
14 my recollection is that there was more than one that  
15 at least touched on that subject and talked about  
16 it. But I think there was maybe one principal one  
17 that talked about check kiting theories and so on. I  
18 certainly reviewed it at one time or another. Go  
19 ahead.

20 Q And we can get the referral and show it to  
21 you if need be. But the record is that that was the  
22 first referral that was submitted in 1992 and that's

1 the one I would like to focus on, if you recall that  
2 referral.

3 A I have a vague recollection of it. These  
4 are things I read early in the engagement, more or  
5 less for background. Our approach was to take a --  
6 if I can lapse into Latin, a de novo look at a lot of  
7 this. We read them for background and certainly  
8 looked at the supporting evidence and so on. It is  
9 not as if we worked off of them. We looked at them  
10 and would go to work from there. It is something I  
11 did early in the process, early in '94. I have the  
12 sort of recollection one has two years after one has  
13 read something.

14 Q Actually I think you answered my question.  
15 They are not something you worked off of or used as a  
16 guide for your analysis as you undertook your  
17 investigation?

18 A I think that's a fair statement.

19 MR. GIUFFRA: The analysis you were  
20 undertaking was whether the RTC could bring a civil  
21 claim and she was looking into whether there would be  
22 criminal liability. That's a different type of

1 analysis; right?

2 THE WITNESS: I think that's a fair  
3 statement.

4 MR. GIUFFRA: Your statement to Mr. Cole  
5 that you disagreed with some of Ms. Lewis's  
6 conclusions, unfair to say Ms. Lewis, but the people  
7 who reviewed and commented on those referrals, you  
8 never based any analysis you did on looking to see  
9 whether there was criminal or potential criminal  
10 liability; you were just focused on the civil  
11 liability?

12 THE WITNESS: That's true.

13 MR. GIUFFRA: Do you want to amend your  
14 answer in what you said in response to his question  
15 about whether her referrals were good or bad  
16 referrals, or is that a bailiwick you want to get  
17 into?

18 THE WITNESS: Maybe it is the hour, but I'm  
19 not sure I need to amend my answer. In any event,  
20 the record says what it says. If one of you is  
21 dissatisfied with my answer, you will just ask me  
22 another question.

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1 MR. COLE: I think that's the case. In my  
2 questioning, I was trying to focus on the factual  
3 allegations set forth in those referrals, not  
4 necessarily the legal conclusions. The record can  
5 stand and we don't need to belabor it at this point.

6 BY MR. COLE:

7 Q Mr. Giuffra also asked you a number of  
8 questions about the process of drafting and revising  
9 the various reports you prepared. I don't think we  
10 have on the record in any one place the persons at  
11 the RTC, and when I say "RTC" I am including the  
12 FDIC, January 1996, with whom you dealt in preparing  
13 the final reports. Can you tell us the persons you  
14 dealt with?

15 A Well, I would deal primarily with Mark  
16 Gabrellian, Melinda Medar and Jim Igo. But from time  
17 to time I would receive comments from a number of  
18 other people. Sometimes I wouldn't particularly know  
19 who the comments came from. Sometimes I would get  
20 oral comments over the telephone and sometimes I  
21 would be given a marked up draft. I don't think  
22 handwriting analysis is one of my strengths. There

1 would be several handwritings on the draft and I  
2 wouldn't necessarily know whose handwriting it was.

3 With that caveat, it is my understanding  
4 that one time or another Ellen Kulka, Andy Tomback,  
5 I'm not sure about Tom Hindes, looked at drafts. I  
6 imagine Terry Arbit did at one time or another  
7 although I don't have any good recollection. Those  
8 are the principal people I remember. I can't  
9 remember.

10 Q I understand the RTC is broken down into  
11 various divisions or groups. You probably are far  
12 more familiar than I am with those groups. I think  
13 the people you described, some would be in the  
14 General Counsel's Office and others would be in other  
15 departments of the Resolution Trust Corporation; is  
16 that correct?

17 A I think everyone I mentioned was either in  
18 the General Counsel's Office or in the professional  
19 liability section. Exactly what the organization  
20 chart would look like as between those two, I can't  
21 really tell you.

22 Q Were those the two departments or sections

1 of the RTC that you primarily dealt with, the  
2 professional liability section and the General  
3 Counsel's Office, in preparing these reports?

4 A Yes.

5 Q And if we could take them one at a time, if  
6 you can do this, starting with the professional  
7 liability section. Who were the persons that you  
8 dealt with in the drafting process primarily?

9 A Again, it would be Mark Gabrellian, Jim Igo  
10 and Melinda Medar.

11 Q Those three persons are in the professional  
12 liability section?

13 A Yes. I forget whether Tom Hindes. I don't  
14 have much recollection of Tom Hindes making comments,  
15 but he was the head of that section. To the extent  
16 he made comments, he is in that section. But I don't  
17 have much of a recollection of him making comments.

18 I think I am drawing the line at the right  
19 place, but if I'm not, maybe Jim can correct me. I  
20 think on an organization chart, Ellen Kulka and Andy  
21 Tomback would be considered general counsel's office  
22 as opposed to professional liability section.

1 Q And Ms. Kulka was the general counsel for a  
2 part of the time in which you did this work?

3 A Yes.

4 Q What was Mr. Tomback's title at that time?

5 A I don't know what his title was. But I  
6 think my understanding was he was under Ms. Kulka and  
7 over Mr. Hindes.

8 Q So we previously focused on the  
9 professional liability section. Now focusing on the  
10 general counsel's office, was Mr. Tomback your  
11 primary contact there in terms of the drafting  
12 process?

13 A Only on rare occasions would I talk to Andy  
14 Tomback about a draft. I'm not positive I ever  
15 talked to him. Maybe I did once or twice. I'm  
16 pretty sure I never talked to Ellen Kulka about a  
17 draft.

18 To the extent I got comments from them,  
19 they would either be conveyed orally by one of the  
20 other people or they would have scribbled comments on  
21 a draft and it would have been sent along to me,  
22 perhaps with comments from other people. Sometimes I

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1 would get a draft with two or three different  
2 handwritings on them. Maybe back then, I could tell  
3 you whose handwriting was which. Now, I couldn't.

4 MR. GIUFFRA: When the comments were  
5 related by someone else, would they say these are  
6 Ellen Kulka's comments, these are Andy Tomback's  
7 comments?

8 THE WITNESS: They might.

9 BY MR. COLE:

10 Q You have produced to the Committee all the  
11 documentation reflecting that process?

12 A Yes.

13 Q We have that available to us.

14 In terms of the breakdown of the subject  
15 matters of the reports and the scope of each report,  
16 was that something that was done at the direction of  
17 the RTC or did Pillsbury, Madison exercise its  
18 independent judgment and reach that determination? I  
19 guess the third alternative would be collaboration --

20 A I was going to say some of each. If you  
21 have a specific one, maybe I can answer it. Some of  
22 each is the best general answer I can give you.



1 Q And in terms of the length of the reports,  
2 the organization of the reports, the style in which  
3 they were written, was that something that was  
4 arrived at by your law firm or was that something  
5 that was dictated by the RTC?

6 A Well, length and organization was certainly  
7 not dictated by the RTC. I mean, the first  
8 instance -- I am speaking for myself. I can't really  
9 speak for Chuck Patterson. I would figure out what I  
10 wanted to say and say it and organize it the way I  
11 saw fit.

12 I would get back comments and criticism and  
13 so on on it. Thinking with respect to preliminary  
14 report on Whitewater, we did some reorganization  
15 between the various drafts. I don't think I can  
16 describe it for you anymore. I remember doing some  
17 reorganization that some of the people at the RTC  
18 suggested. There were some helpful suggestions.

19 They would say I don't understand this or  
20 what are you getting at here or would it be better if  
21 this section went before this section and we would  
22 discuss it and maybe I would make a change and maybe

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1 I wouldn't. We would kick around these ideas.

2 It wasn't as though they ever said to me it  
3 ought to be this long and you ought to do it that  
4 way. I would sit down and figure out what I was  
5 going to say and write it and then I would get  
6 feedback.

7 Q Understanding that, was there ever a time  
8 when they said there is a subject matter or an area  
9 that has not been covered that you need to add or a  
10 subject matter or area that you covered that should  
11 be deleted in its entirety or were the changes more  
12 at the periphery?

13 A There were some examples of that sort of  
14 thing. There were certainly a lot of changes that I  
15 would characterize as peripheral, most of them.  
16 Maybe a few others would disagree. There was some of  
17 that.

18 MR. GIUFFRA: When you say "that," what do  
19 you mean?

20 THE WITNESS: The first part of his  
21 question, additions or deletions.

22 I will give you an example if this is

1 helpful. The first draft of the preliminary report  
2 on Whitewater includes a discussion of Mrs. Clinton's  
3 work at the Rose Law Firm. We read that first draft  
4 and the general reaction of people was this doesn't  
5 have much to do with Whitewater, this doesn't add  
6 anything. We decided we would take it out and set it  
7 aside and maybe use it later.

8 Six months or so later, the client said why  
9 don't you take that stuff we set aside and why don't  
10 you go to work on that, we think it would be a good  
11 idea to have you do a report on the Rose Law Firm and  
12 cover that topic and this can be the start of that  
13 work.

14 So I took the work I had set aside six  
15 months before and then went on from there.

16 BY MR. COLE:

17 Q The suggestion initially to take the  
18 discussion of the Rose Law Firm out of the draft  
19 Whitewater report was a suggestion from others in  
20 your law firm or from the client?

21 A Somebody at RTC, but I don't remember who.

22 Q Do you recall at what point in time it was

1 decided that you would do a separate report on the  
2 Rose Law Firm? As I understood your prior testimony,  
3 that wasn't part of the initial division of labor.

4 A Right. I'm a little vague on this. What I  
5 remember and what I was just alluding to is that in  
6 the mid to late spring of '95, the client asked me to  
7 do a separate report on the Rose Law Firm. As I  
8 already said, I started to do something on that  
9 subject in '94 and then we set it aside. What I  
10 specifically remember -- that's not very specific --  
11 is that sometime in the April-May '95 time frame, I  
12 was asked to take that work off the shelf and go into  
13 it further and expand it with respect to the Rose Law  
14 Firm.

15 Q Was there a particular event or piece of  
16 evidence that prompted the request for you to prepare  
17 a separate report on the Rose Law Firm?

18 A Not that I recall.

19 MR. GIUFFRA: Was it in any way connected  
20 with the RTC IG report?

21 THE WITNESS: I don't think so. It is some  
22 months before that. Until I received the RTC IG

1 report, which was sometime after it was issued --

2 MR. GIUFFRA: August '85.

3 THE WITNESS: Right. It was issued in  
4 August. Until I received that report, I had  
5 essentially no knowledge at all as to what the RTC IG  
6 was doing.

7 BY MR. COLE:

8 Q Was it contemplated from the outset that  
9 one of the potential claims you would review would be  
10 a claim against the Rose Law Firm?

11 A Yes, but exactly what the level of priority  
12 is is kind of hard to say. The outset was it was a  
13 very busy time because we felt like we had three  
14 weeks to do the whole deal. We were kind of running  
15 around like crazy reading vast amounts of documents  
16 and trying to figure out what this is all about.

17 What I remember is we had some documents we  
18 received fairly promptly, Rose Law Firm documents.  
19 We took a look at that. There was sort of a quick  
20 look at that and so on. I think I understood it --  
21 this is very vague, I realize but it is as good as I  
22 can do -- as some topic that we might or might not

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1 explore in some level of detail at some point. It is  
2 a very fluid situation. Exactly what we were going  
3 to look at and what our priorities were was very much  
4 up in the air.

5 To a large extent, the client was saying to  
6 us, once we got more time, once the extender statute  
7 was passed, the client is coming to us and saying  
8 what do you think the priorities ought to be, what do  
9 you think we ought to look at? Then we talked  
10 internally about what should be the approach. You  
11 can't look at everything. It would be completely  
12 unworkable.

13 Q Was that the time you and Mr. Patterson had  
14 the discussion about the specific areas of  
15 responsibility in the investigation?

16 A That was sort of an outgrowth. We looked  
17 at the things and discussed internally and to some  
18 extent with the client what is a good approach here,  
19 what makes sense and we began to coalesce with a view  
20 as to what makes sense.

21 Then Mr. Patterson had discussions with the  
22 client and came back to me and said, let me run this

1 by you and see if you have any big problem with it,  
2 but this is the way I think it should be, or words to  
3 that effect. He said you do Whitewater, I will do  
4 Castle Grande, 1308 and so on.

5 Q Focusing on the initial period of time  
6 before the passage of the extender statute, was the  
7 primary thrust of your investigation at that time to  
8 evaluate whether there were claims relating to  
9 Whitewater Development Corporation that could be  
10 asserted on behalf of Madison Guaranty?

11 A I wouldn't say so, no. I think we  
12 recognized we understood that Whitewater was  
13 something that we were supposed to look at. But we  
14 also recognized or were told or soon gained an  
15 appreciation -- I'm not sure which applies -- that  
16 there were other transactions such as Castle Grande  
17 that seemed far more promising, that seemed to  
18 involve far more money that ought to get a pretty  
19 quick look as well.

20 I don't think it is fair to say that  
21 Whitewater was the primary initial focus.

22 The other thing about Whitewater was that

1 in the early stages we had very little evidence with  
2 respect to Whitewater.

3 Q You had Ms. Lewis's referrals?

4 A Yes, and there wasn't a whole lot else. A  
5 lot of the Whitewater work waited on the first 6(e)  
6 petition, because it wasn't until that was granted  
7 and we began to get access to Madison Guaranty  
8 records, which were then in the possession of the  
9 Independent Counsel, that we began to have access of  
10 the kind of records we felt we needed to do anything  
11 with that stuff.

12 Q At what point in time did you obtain enough  
13 information about the Whitewater investment and its  
14 relationship to Madison Guaranty to conclude that it  
15 was unlikely there would be claims to assert relating  
16 to Whitewater?

17 A It is hard to say. A while ago, I was  
18 talking about the process in October and how a lot of  
19 things came together in a short time. It was really  
20 that time period, in my mind at least, and others  
21 might look at it differently. In my mind, it is the  
22 October time period when we kind of pulled together



1 that stuff and were able to do the analysis and so  
2 on, that's really when we knew what we had and what  
3 we didn't have with respect to Whitewater.

4 Q What prompted you to do an initial report  
5 on Whitewater and release that in April 1995? That  
6 was your first report; correct?

7 A Yes.

8 Q The other reports weren't issued until some  
9 months later.

10 A Chuck Patterson started drafting his Castle  
11 Grande and 1308 report not long after I started  
12 working on the preliminary report on Whitewater, the  
13 end of '94. Exactly why mine got to final form  
14 first, I don't really remember. I can only  
15 speculate. I think the client asked for the report.  
16 Castle Grande, 1308 Main Street and Whitewater were,  
17 as I have already testified, sort of our three  
18 primary areas of focus. I think all this is a bit in  
19 the realm of speculation now, that at some point the  
20 client said, look, you have been working for a while  
21 now, let's have an interim report on where you are on  
22 these projects.

1 Q Whitewater was the first of those three  
2 areas where you were in a position to issue a  
3 preliminary report?

4 A I'm not sure I can say yes or no. Chuck  
5 and Kent and Mike were doing what they were doing  
6 with respect to Castle Grande and 1308. I wasn't  
7 observing it on that close a basis.

8 MR. GIUFFRA: You communicated back in  
9 October '94 what your preliminary conclusions were  
10 with respect to Whitewater to the client, right?

11 THE WITNESS: You mean other than in the  
12 report?

13 MR. GIUFFRA: You had orally communicated  
14 back to your client or by means of a draft.

15 THE WITNESS: Certainly. Obviously, we did  
16 by means of a draft. If you mean in addition to  
17 that, I'm fairly confident I had regular phone calls  
18 with the client in October. I don't have any  
19 recollection of any big discussion of what we were  
20 finding or where we were going. I'm sure we talked  
21 quite frequently in that period.

22 MR. GIUFFRA: There was pressure from the

1 client to have a report issued sometime in April of  
2 '95?

3 THE WITNESS: No. I wouldn't say there was  
4 pressure to have a report issued in April of '95.  
5 This first draft in October '94 and indeed it was  
6 almost the opposite of pressure, that somehow the  
7 process went on until April of '95. I wouldn't  
8 describe it as pressure, no.

9 MR. GIUFFRA: They said they wanted a  
10 report that could be disseminated?

11 THE WITNESS: Disseminated? I don't think  
12 so. They wanted a report for their own internal  
13 purposes. I don't think they planned to disseminate  
14 it to anybody until you all started demanding to see  
15 that sort of thing or whatever. You would have to  
16 ask them what their motivations were or whatever. I  
17 was asked to do a report and I don't have a clear  
18 recollection of the circumstances and so I went to  
19 work. But not pressure, really.

20 From time to time with respect to various  
21 drafts, I would be told could we have another draft  
22 by next Friday and I might say yes, I think at that

1 time is doable or I might say huh-uh, and we talked  
2 about when we would get it done by or whatever. Like  
3 any good client, they might say we really would like  
4 it by next Friday, and I might take a hint and work a  
5 little harder but nothing beyond that.

6 BY MR. COLE:

7 Q To finish my line of questioning. During  
8 the process of drafting all of these reports, did  
9 anyone at the RTC ever direct you that you should  
10 reach a certain conclusion or not reach a certain  
11 conclusion?

12 A No.

13 Q All of these reports reflect your best,  
14 independent, professional judgment as to what  
15 conclusions are reported in the reports?

16 A Yes.

17 Q And you don't feel that the ultimate  
18 conclusions, leaving aside stylistic edits or  
19 organizational suggestions, were influenced or  
20 directed by the RTC?

21 A No, not at all, no.

22 Q And in terms of the conclusions, to use

1 your earlier characterization, the buck stops with  
2 your firm?

3 A Yes. It is our name going on this and so  
4 on.

5 MR. GIUFFRA: When did you make a  
6 preliminary conclusion that you didn't have a basis  
7 for suing the Rose Law Firm.

8 THE WITNESS: I'm not sure. That sort of  
9 ebbed and flowed in this sense that when we first  
10 started looking at claims against the Rose Law Firm,  
11 I didn't think much of them. As time went by and I  
12 worked on it more, I began to think, well, maybe  
13 there is more likelihood there could be a claim  
14 here. It was never a point at which I thought we got  
15 a good claim, let's go.

16 But I would kind of go back and forth a  
17 little bit. You have the earlier drafts. I can't  
18 really remember what I say in them or if I say  
19 anything. But just to the extent I can kind of  
20 remember my own thought processes, I would say there  
21 is nothing here and other places where I said if we  
22 dig a little more, we can find something.

1 MR. GIUFFRA: When do you think your  
2 thinking solidified? Was it the end of '95 or  
3 earlier than that?

4 THE WITNESS: The word "solidified" bothers  
5 me a bit. Once we had the tolling agreement and  
6 started getting the new evidence, I tried to the best  
7 of my ability to take a fresh look at things. The  
8 work that resulted in the report of December 28, not  
9 very long before December 28, because we were doing a  
10 lot of work right up close to that date. The Hubbell  
11 interview, Thrash, Thomas, other things that were all  
12 in December.

13 So there was a lot that was still fluid  
14 until close to the completion of that report.

15 MR. GIUFFRA: Did you ever have any  
16 discussions with anyone at the RTC about the fact  
17 that these reports might ultimately become public?

18 THE WITNESS: I don't have any firm  
19 recollection of that sort of discussion. I'm  
20 inclined to think the only sort of conversations we  
21 ever had -- pardon me for saying this -- and these  
22 were fairly casual sort of bantering things -- were

1 along the lines of as soon as we sent them up to the  
2 Hill, they will be leaked, people would somewhat  
3 cynically say that sort of thing.

4 MR. GIUFFRA: You had an expectation that  
5 the reports would become public?

6 THE WITNESS: I think at least once your  
7 Committee or the House Committee or both started to  
8 ask for things. I will call it cynicism but I  
9 thought yes, somebody would leak the stuff.

10 MR. GIUFFRA: You had an expectation the  
11 reports would become public when you released them?

12 THE WITNESS: In the sense I have  
13 indicated.

14 MR. GIUFFRA: You think the people at the  
15 RTC had a sense the reports would become public one  
16 way or another?

17 THE WITNESS: All I can tell you is we had  
18 these bantering conversations about the likelihood of  
19 leaks.

20 MR. GIUFFRA: You were aware, once you made  
21 a judgment, not to bring a lawsuit, that would be a  
22 decision that might get second-guessed by people on

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1 the outside.

2 THE WITNESS: Yes, I think I was aware of  
3 that.

4 MR. GIUFFRA: In drafting the reports, it  
5 was important you provide all the evidence to  
6 strengthen the conclusion that no lawsuit should be  
7 brought; right?

8 THE WITNESS: I wouldn't put it that way.  
9 The way I would put it is no matter what we  
10 recommended, no matter what we concluded, 50 percent  
11 of the world, at least the world up here wasn't going  
12 to like it. No matter what we said, pro or con, with  
13 respect to anything, we better get it right because  
14 otherwise you or you --

15 MR. COLE: Slightly over 50 percent.

16 THE WITNESS: Whatever it is. Somebody was  
17 going to be jumping up and down on us. So we ought  
18 to be careful and do our best to get it right. That  
19 was my thought, that somebody was not going to like  
20 this and would come after us, so we ought to do a  
21 good job.

22 MR. COLE: Your conclusions weren't



1 affected by any expectation that the reports would be  
2 made public?

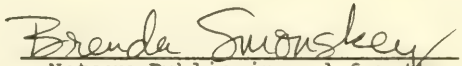
3 THE WITNESS: No.

4 MR. GIUFFRA: Thank you very much. We will  
5 have to reconvene at some future date, hopefully, by  
6 telephone.

7 (Whereupon, at 6:04 p.m., the deposition  
8 was adjourned.)  
9

10 -----  
11 BRUCE A. ERICSON  
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I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires      SEPTEMBER 14, 1996



**DEPOSITION OF LORETTA LYNCH  
IN RE: S. RES. 120**

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**TUESDAY, MAY 14, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of LORETTA LYNCH, called for examination pursuant to notice of deposition, at 5:10 p.m. in Room 534 of the Dirksen Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

VIET D. DINH, Esq.  
Majority Associate Special Counsel  
NEAL E. KRAVITZ, Esq.  
Minority Principal Deputy Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

JOHN KEKER, Esq.  
Keker & Van Nest, L.L.P.  
710 Santone Street  
San Francisco, California 94111-1704  
On behalf of the Deponent.

**ALSO PRESENT: ROBERT BUCHANAN**



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## PROCEEDINGS

MR. DINH: Ms. Lynch, my name is Viet Dinh. I am with the Majority staff of the Special Committee to investigate Whitewater, which was established by Senate Resolution 120.

This deposition is conducted pursuant to that resolution, which establishes a Special Committee, as I noted before, to be administered by the Senate Banking Committee, to conduct an investigation into Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, and other related matters.

Section 1(b)(3)(A) of Resolution 120 authorizes an investigation and public hearings into, I quote, "the operations, solvency and regulation of Madison Guaranty Savings & Loan Association, and any subsidiary, affiliate, or other entity, owned or controlled by Madison Guaranty Savings & Loan Association."

Section 1(b)(3)(C) of Resolution 120 authorizes an investigation and public hearings into, quote, "the policies and practices of the RTC and the

4

federal banking agencies regarding the legal representation of such agencies with respect to Madison Guaranty Savings & Loan Association."

And section 1(b)(3)(B) of Resolution 120 authorizes an investigation and public hearings into, and I quote, "the activities, investments, and tax liability of Whitewater Development Corporation, and as relates to Whitewater Development Corporation, of its officers, directors, and shareholders."

I anticipate that these subjects will be the focus of today's deposition. The testimony will be taken under oath. And a stenographer will prepare a record of questions and answers.

This deposition is made in advance of public hearings which are ongoing right now. As I explained to your counsel, we do not know whether or not you will be a witness at any such hearings, and the Chairman is still making that determination. And a lot of that will depend on your testimony in the deposition today. But we will give you as much notice as possible, if and when the Chairman makes a decision whether or not to call you at any such

1 hearings.

2 The transcript of today's deposition will  
3 be treated as Committee confidential until the  
4 commencement of those hearings, at which time they  
5 may be made, in whole or in part, public. Prior to  
6 the hearings, as I just explained to your counsel off  
7 the record, we will send you a copy of your  
8 deposition for the purpose of making corrections on  
9 an errata sheet. That provision of your transcript  
10 is for the limited purpose of review and information  
11 in the transcript is not to be disclosed for any  
12 other reason.

13 If you are called to testify at the public  
14 hearings, you will be provided with a copy of your  
15 deposition transcripts four days in advance of your  
16 testimony, again for the limited purpose of preparing  
17 yourself for testimony at the public hearings. And  
18 the contents of the transcript should not be  
19 disclosed for any other reason.

20 You may be represented by counsel, and  
21 counsel has identified himself for the record.

22 MR. KEKER: I am John Keker, K-e-k-e-r,

1 Keker & Van Nest, San Francisco, California. The  
2 deposition that we give will be Ms. Lynch's property  
3 as much as it is the Committees's. It is totally  
4 unacceptable to have anybody, the Committee or  
5 anybody else, say what she can or cannot do with the  
6 deposition, and we can't agree to that, Viet, I'm  
7 sorry. That's the most ridiculous thing I have ever  
8 heard. It wouldn't even apply to grand jury  
9 testimony.

10 MR. DINH: I am merely setting forth the  
11 procedure as set forth under Senate Resolution 120.

12 MR. KEKER: Senate Resolution 120 is  
13 unconstitutional and absurd and we will not live with  
14 that. If that's what it says, we will not live with  
15 that portion of it. We are happy to have her  
16 deposition taken. We appreciate the courtesy of  
17 doing it by telephone deposition. We appreciate your  
18 courtesy in sending out documents so she can look at  
19 them.

20 But the idea that these documents and this  
21 deposition, which is after all her property, her  
22 knowledge, her notes, her everything, is not

1 something that she can do with as she wishes, just is  
2 wrong and unacceptable. So we are prepared to go  
3 forward but you should know that that is not a  
4 condition of the deposition from our point of view.

5 MR. DINH: First of all, let's take each  
6 issue first. With respect to the documents which we  
7 have sent you for the deposition, I understand that  
8 most of those documents are -- were -- are copies of  
9 copies of her files that you have produced to this  
10 Committee previously; correct?

11 MR. KEKER: Correct.

12 MR. DINH: Those are designated as LML,  
13 Bates range.

14 MR. KEKER: To the extent they are  
15 designated LML, they are what we produced to the  
16 Committee pursuant to your subpoena.

17 MR. DINH: Some other ones were not from  
18 her files; correct?

19 MR. KEKER: To the extent you sent us -- I  
20 have seen some notes, apparently, of Susan Thomases.

21 MR. DINH: As to those notes and other  
22 materials Bates stamped other than LML, I do not

---

1 construe your earlier statement about they being her  
2 property to apply. Am I correct on that assumption?

3 MR. KEKER: That's certainly true and we  
4 would be happy to send them back to you or -- they  
5 are not her property now, you simply loaned them to  
6 us as a courtesy. If you ask her about them in the  
7 deposition, her testimony in the deposition about  
8 exhibits and so on is going to be public. I am happy  
9 to send back the documents that don't belong -- that  
10 weren't provided to us by you.

11 But my point is broader, that the  
12 deposition itself becomes -- you know, it is a  
13 deposition you-all can use and it is a deposition we  
14 can look at, is what we want. We don't have any  
15 particular plans to do anything. I just don't want  
16 to be bound.

17 MR. DINH: I wanted to first address the  
18 question with respect to the physical documents,  
19 first, and I would appreciate it if you would return  
20 those to us at the conclusion of the deposition.

21 MR. KEKER: We will do that.

22 MR. DINH: Thank you very much for that.



1 With respect to the confidentiality of the  
2 deposition, I must advise you that those are the  
3 procedures set forth under Senate Resolution 120. I,  
4 as counsel for the Committee, am bound by the  
5 procedures set forth in the Resolution 120. You have  
6 opined that the procedures set forth thereunder may  
7 be unconstitutional. That issue, obviously, is not  
8 ripe at this point.

9 We are simply going to -- we are simply  
10 going to proceed with the deposition, and why don't  
11 we cross the bridge of confidentiality when we cross  
12 that, as you have stated you have no current plans to  
13 publicize the material or anything, that would be in  
14 violation of the procedures set forth under Senate  
15 Resolution 120. Is that okay?

16 MR. KEKER: I am not sure -- the Senate  
17 resolution says what? I have looked at it about  
18 depositions and I don't remember what it says, if  
19 anything, about the strictures under which the  
20 witness, after giving a deposition, is put. I don't  
21 remember any stricture.

22 MR. KRAVITZ: John, this is Neal Kravitz.

---

10

1 I actually think that you are right. Senate  
2 Resolution 120, at least as far as I am aware, does  
3 not set forth the restrictions that Viet was  
4 describing. The restrictions that Viet was  
5 describing have really come up more as a matter of  
6 practice or tradition over the past year or so. And  
7 the reason for it was that, as you may be aware,  
8 there have been significant problems, or at least  
9 initially, there were significant problems with leaks  
10 of certain confidential documents and confidential  
11 deposition transcripts, before the time that  
12 witnesses were actually called to testify about those  
13 documents or transcripts at public hearings.

14 And, the Committee has -- since the time  
15 that S. Res. 120 was passed, the Committee has come  
16 up with its own additional procedures to try to avoid  
17 prehearing leaks. And the rule has been that  
18 witnesses can come to the Senate and review their  
19 transcripts, under tight security, in order to make  
20 an errata sheet. I think what Viet was simply trying  
21 to offer was the possibility that we would send the  
22 transcript out to San Francisco, so that you and

1 Ms. Lynch didn't need to come here to look at the  
2 transcript.

3 But I guess I would -- I think these are --  
4 there may be -- it may be a drag that we have these  
5 procedures but I think they were necessary. They  
6 were procedures that were agreed to on a bipartisan  
7 basis, and if it is acceptable -- I hope it would be  
8 acceptable to you that you would receive the  
9 transcript for the purposes of reviewing it and  
10 preparing an errata sheet, and for those purposes  
11 only.

12 MR. KEKER: What if we want to talk to  
13 anybody that we may want to talk to in advance of  
14 testimony before the Committee about what she said in  
15 the deposition? Is somebody trying to tell me we are  
16 not allowed do that? This used to be a free  
17 country.

18 MR. KRAVITZ: I don't think anybody is  
19 telling you -- let me say, from my perspective, I am  
20 certainly not telling you that. It is my  
21 understanding of the procedures that you cannot talk  
22 to anyone else about what Ms. Lynch has testified to

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12

1 in her deposition.

2 My understanding is that you should agree  
3 or should be expected to agree not to share the  
4 transcript, the actual transcript with anyone,  
5 because if you agree to that, that puts you in the  
6 same position as all of the other witnesses who come  
7 to the Senate to review their transcripts in the  
8 confines of our secure document rooms.

9 No one has told any of those witnesses that  
10 they can't tell someone else what they testified to.  
11 It is just that they don't have access to their  
12 actual transcripts until four days before they are  
13 called as hearing witnesses.

14 MR. KEKER: Let me cut it short, Neal,  
15 Viet. What we are prepared to agree to is that we  
16 will not share the transcript itself with anybody  
17 else until she has given public testimony before the  
18 Committee. If that's acceptable, we can agree to  
19 that.

20 MR. DINH: That is perfectly acceptable and  
21 I think that is the spirit of the confidentiality  
22 rules of the Committee. Thanks, John.

1 MR. KEKER: Okay, let's go ahead.

2 MR. DINH: Great. Just to close the loop  
3 on this, we will send you a confidentiality  
4 agreement, and if there is any language in there that  
5 you have objections to, we can certainly again talk  
6 about any such language, and then we can talk about  
7 that.

8 MR. KEKER: Okay, the agreement -- but you  
9 should understand the agreement we have made is the  
10 one I just made on the record. We will live by it,  
11 and beyond this, I doubt we will make any agreement.

12 MR. DINH: Great, that's certainly on the  
13 record. Thank you, John.

14 MR. KEKER: Okay.

15 MR. DINH: Just continuing on with the  
16 procedures set forth under Resolution 120, objections  
17 to the form of the questions will be noted for the  
18 record. Ms. Lynch, if you don't understand a  
19 question or if I phrase a question inartfully, which  
20 in all likelihood I will, please just tell me and I  
21 will rephrase it. I am still learning this language  
22 as I speak.

1 There are two grounds upon which counsel  
2 may object and give an instruction for you not to  
3 answer. And those two grounds are privilege and  
4 scope. And of course, scope is that the question or  
5 the answer it elicits go beyond the scope of the  
6 Committee within -- as set forth in Senate Resolution  
7 120. Under procedures set forth in Resolution 120,  
8 the Committee Chairman ultimately will rule on  
9 objections where the witness refuses to answer.

10 I will ask the court reporter to now swear  
11 in Ms. Lynch.  
12 Whereupon,

13 LORETTA LYNCH

14 was called as a witness and, having first been duly  
15 sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MR. DINH:

18 Q Ms. Lynch, for the record, can you give me  
19 your name and your address?

20 A My name is Loretta Lynch, and my address is

21 --

22 MR. KEKER: No, let's give the work

1 address. There is no reason you need the home  
2 address.

3 MR. DINH: That would be fine.

4 THE WITNESS: Keker, K-e-k-e-r, & Van Nest,  
5 710 Santone Street, S-a-n-t-o-n-e, San Francisco,  
6 California 94111.

7 BY MR. DINH:

8 Q And is Keker & Van Nest your current  
9 employer?

10 A Yes.

11 Q How long have you been with the firm?

12 A I joined the firm in June of 1991.

13 Q Have you ever worked at the White House,  
14 Ms. Lynch?

15 A No.

16 Q Did you work in the 1992 Clinton  
17 Presidential campaign, Ms. Lynch?

18 A Yes.

19 Q From what period to what period?

20 A I worked in the 1992 Clinton Presidential  
21 campaign from January 20, 1992 till mid-June 1992.

22 Q And after you left the campaign in mid-June

---

16

1 1992, did you go back to Keker & Van Nest?

2 MR. KEKER: I object to the question as  
3 outside the scope. She worked on another campaign  
4 that's irrelevant here and then came back to the  
5 firm.

6 MR. DINH: That's fine. I was just trying  
7 to establish her general employment history here.

8 BY MR. DINH:

9 Q Can you give me, whatever your counsel will  
10 allow, a brief educational and employment history  
11 prior to June 1991.

12 A Prior to 1991?

13 Q Yes. I take it you're an attorney?

14 A Yes.

15 Q Where did you go to law school?

16 A I went to Yale.

17 Q And what year did you graduate from Yale?

18 A 1987.

19 Q Did you work for the state of Arkansas, or  
20 for the Clinton campaigns, in any capacity from 1987  
21 to 1991?

22 A No.



1 Q How did you become involved in the Clinton  
2 Presidential campaign?

3 A What -- I don't know what you mean.

4 Q How did you come to accept a job with the  
5 Clinton Presidential campaign on January 20, 1992?  
6 Did someone reach out to you; did you call somebody?

7 MR. KEKER: I'm sorry. I object to this on  
8 the grounds of scope. What does this have to do with  
9 what you are investigating?

10 MR. DINH: I am trying to establish her  
11 relationships within the Clinton Presidential  
12 campaign, and to see how that affects her working  
13 relationship during the campaign, and how that  
14 relates to the activities she had there in relation  
15 to Whitewater and Madison.

16 MR. KEKER: If you want to ask her whether  
17 or not she knew certain people before January 20,  
18 1992, she can answer that. But I don't think -- how  
19 she decided to go to work for the campaign is  
20 relevant or within the scope. I object on those  
21 grounds.

22 BY MR. DINH:

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1 Q There are two ways to do it and I will just  
2 go down the list of people and we can do it the  
3 roundabout way.

4 Did you know Governor Clinton before you  
5 came to the campaign?

6 A I did not.

7 Q Did you know Hillary Clinton?

8 A No.

9 Q Did you know Susan Thomases?

10 A No.

11 Q Did you know Harold Ickes?

12 A No.

13 Q Did you know Dan Greenberg?

14 A No.

15 Q Did you know Web Hubbell?

16 A No.

17 Q Did you know anybody who worked at the Rose  
18 Law Firm?

19 A I don't know all the people who work at the  
20 Rose Law Firm so I don't -- I couldn't answer that  
21 one way or the other.

22 Q Did you know anybody who, within your state

1 of knowledge in January 1992, before you came to work  
2 in the campaign, had worked -- was working for the  
3 Rose Law Firm?

4 A Who has been currently working for the Rose  
5 Law Firm?

6 Q Yes.

7 A No.

8 Q Did you know Jim McDougal?

9 A No.

10 Q Did you know Jim Blair?

11 A No.

12 Q Did you know Bruce Lindsey?

13 A No.

14 Q Did you know Mickey Kantor?

15 A Yes.

16 Q Did he approach you to come to the  
17 campaign?

18 MR. KEKER: That's outside the scope of  
19 Senate Resolution 120, and we object on that ground.

20 BY MR. DINH:

21 Q Ms. Lynch, what was your position in the  
22 campaign?

1 A I was a member of the domestic policy  
2 staff.

3 Q Did you have a formal title?

4 A Not that I know of.

5 Q Were you a member of the domestic policy  
6 staff for the entire time you were with the campaign?

7 A I don't know if my position within the  
8 campaign ever changed formally.

9 Q Okay. But did your responsibilities in the  
10 campaign change over time?

11 A Did they change over time from what?

12 Q From January 20, 1992 until mid-June 1992.

13 A I had various responsibilities within the  
14 campaign, when I was on the campaign.

15 Q What was your primary responsibility when  
16 you first joined the campaign?

17 A I was a member of the domestic policy  
18 staff. I did a variety of things, answered  
19 questionnaires, did briefing memos, things like  
20 that.

21 Q Did there come a time during the campaign  
22 when you were asked to coordinate responses to

1 questions or inquiries relating to Whitewater  
2 Development Corporation and Madison Guaranty, and  
3 other matters related to that?

4 A No.

5 Q Did there come a time when you actually  
6 responded to such inquiries?

7 A Yes.

8 Q When was the approximate time when you  
9 first started taking on those duties?

10 A Which duties are those?

11 Q That is, to respond to inquiries or  
12 questions, or allegations relating to Whitewater,  
13 Madison, and other matters related to those two  
14 entities?

15 A Inquiries or questions posed by whom?

16 Q By persons both outside the campaign and  
17 inside the campaign.

18 A Could you repeat the question?

19 Q At what time did you become involved in  
20 responding to inquiries and questions relating to  
21 Whitewater, Madison, and other related matters?

22 A Approximately mid-February in 1992.

1 Q And I think you stated, in answer to one of  
2 my earlier questions, that you were not asked to do  
3 so; correct?

4 A Correct.

5 Q Then what were the circumstances of you  
6 becoming involved in this issue in mid-February of  
7 1992?

8 A I believe someone I was working with told  
9 me about the fact that a New York Times reporter was  
10 asking questions about a land deal in northwest  
11 Arkansas, and I started listening for other reports  
12 of that reporter.

13 Q But nobody directed you to do so?

14 A Not that I recall.

15 Q You said someone you were working with in  
16 the campaign; do you remember who it was?

17 A It was either Jim or Diane Blair.

18 Q Were they also on the domestic policy staff  
19 with you?

20 A Jim Blair was not. I don't know the scope  
21 of Diane Blair's responsibilities.

22 Q But they were involved in the campaign,

1    though?

2       A    Diane came to the campaign every day, yes.

3       Q    And Jim Blair, more sporadic, or -- more  
4   sporadic of an involvement?

5       A    Jim did not come to the campaign every  
6   day.

7       Q    Did he have a formal position in the  
8   campaign that you knew of?

9       A    Not that I know of.

10      Q    But he was affiliated with the campaign;  
11   correct?

12      A    He was a friend of the Clintons.

13      Q    And The New York Times reporter, I take it  
14   you were referring to Jeff Gerth?

15      A    I later found out it was Jeff Gerth.

16      Q    Do you recall when you found out it was  
17   Jeff Gerth?

18      A    I know that I knew that it was Jeff Gerth  
19   prior to the date of the New Hampshire primary, but I  
20   don't recall the specific day I knew that it was Jeff  
21   Gerth.

22      Q    And do you recall when the New Hampshire

---

1   primary was?

2       A    I do. It was February 18.

3       Q    Wow. And did you continue to work on  
4   issues relating to Whitewater and Madison from  
5   mid-February until when you left in mid-June of 1992?

6       A    I continued to work on issues after  
7   mid-February. I don't recall until when.

8       Q    Okay. Did your involvement with issues  
9   relating to the Whitewater and Madison, that is your  
10   work within the campaign in relation to these  
11   matters, did they cease before you left the campaign?

12      A    I'm sorry, I couldn't hear you.

13      Q    I'm sorry about that.

14            Did your involvement in the campaign, your  
15   duties in the campaign relating to issues involving  
16   Whitewater or Madison, did those duties cease before  
17   you left the campaign in mid-June of 1992?

18      A    I believe I still had the Whitewater  
19   issue. It just wasn't as -- it wasn't a focal point  
20   for the press at some future point in time.

21      Q    Ms. Lynch, I am going to start referring to  
22   some documents, documents that I had either Federal



1 Expressed to your counsel yesterday or faxed to your  
2 counsel earlier today. And the first one I am going  
3 to direct your attention to is document Bates stamped  
4 LML 227 and LML 228.

5 MR. KEKER: We have those in front of us.

6 BY MR. DINH:

7 Q Have you had a chance to study these  
8 documents?

9 A I have looked at them.

10 Q For the record --

11 MR. KEKER: I should tell you it is 20 of 3  
12 California time. We got these documents about 11:00  
13 this morning.

14 MR. DINH: Okay, thank you. If at any time  
15 you need time in order to study the documents, I am  
16 sure that counsel will so instruct me, and give you  
17 as much time as you need.

18 MR. KEKER: Okay, we may take you up on  
19 that.

20 BY MR. DINH:

21 Q Just for the record, let me direct your  
22 attention to LML 228. At the top of the page there,

1 it says between the "to" and the "from," it says  
2 "Loretta," circled. Do you see that?

3 A Yes.

4 Q Does that refer to you?

5 A That's my name. I think so.

6 Q These documents were from your files;  
7 correct?

8 MR. KEKER: Well, we have previously  
9 objected to identification of the source of the  
10 documents. I've stated in conversations with  
11 Mr. Dinh that we produced all the documents  
12 responsive to the subpoena that were in our  
13 possession when Ms. Lynch got the subpoena.

14 We have objected to identifying documents,  
15 that they're attorney work product, the source of  
16 which is attorney work product. This, I believe, is  
17 such a document. Actually, we don't know at this  
18 point whether this is such a document or not, so we  
19 can't tell you whether or not -- all we can tell you  
20 is that she produced it and it was in our possession  
21 at the time you sent the subpoena.

22 MR. DINH: Just so I understand, the basis

1 of your objection is attorney work product; correct.

2 MR. KEKER: Yes.

3 MR. DINH: And that derives from the fact  
4 that you received documents from sources other than  
5 Ms. Lynch's files, in anticipation or in preparation  
6 of her testimony, either for her or in other fora;  
7 correct?

8 MR. KEKER: The attorney work product  
9 privilege is as broad as it is and that's what we are  
10 relying on, but that's one thing that would be  
11 covered by the attorney work product privilege.

12 MR. DINH: Therefore, identifying the  
13 source of any particular document -- just so I get  
14 your position straight -- according to your argument  
15 would be covered under the work product privilege?

16 MR. KEKER: Because it identifies the  
17 investigation her attorneys made in connection with  
18 preparation for testimony --

19 MR. DINH: Great.

20 MR. KEKER: -- and the work that her  
21 attorneys did.

22 MR. DINH: Great.

1 BY MR. DINH:

2 Q Ms. Lynch, now that you have had a chance  
3 to study these documents, do you recall receiving  
4 these documents in April of 1992?

5 A I do not.

6 Q You do not. Just for the record, they  
7 are -- LML 227 is a route slip from Nash to Mike G,  
8 date 4/1/92, "for your information," it is marked.  
9 And the remarks says, "I am going to tell them to  
10 come to my office, to get the info. All this stuff  
11 is so" -- I believe that says "LBS. in weight."

12 And LML 228 is another slip, appears to be  
13 a memorandum slip, with the letterhead of Department  
14 of Finance and Administration, director's office, to  
15 Gaudin, G-a-u-l-d-i-n, from, scribbled signature,  
16 date 4/1/92, remarks "Neal Lewis from New York Times  
17 has been in touch with Paul Mallard today about the  
18 ADFA lease. He wanted information about the parties  
19 meeting with Bob in the governor's office. He also  
20 asked about the letters from employees objecting to  
21 the location."

22 MR. KRAVITZ: Viet, excuse me for a

1 second. I think LML 0227 actually doesn't say "so  
2 LBS," I think it says "50 LBS," which means pounds.  
3 MR. DINH: That certainly would make more  
4 sense. Thank you very much, Neal.

5 BY MR. DINH:

6 Q Do you recall -- first of all, do you know  
7 who Gauldin is, I believe it is Mike Gauldin?

8 A I do.

9 Q Who is he?

10 A He was the governor's press secretary in  
11 Arkansas in 1992.

12 Q So that would cover April of 1992 also?

13 A Yes.

14 Q Okay. Do you recall generally the  
15 information that I just read to you off of LML 228,  
16 that is a reporter from The New York Times has been  
17 in touch with Paul Mallard regarding the ADFA lease?

18 A No. I didn't know that a reporter had been  
19 in touch with Paul Mallard about the ADFA lease.

20 Q Okay. Do you recall anybody bringing this  
21 to your attention, that a reporter had asked for  
22 information relating to ADFA leases?

1 A I recall in 1992 that ADFA leases was an  
2 issue generally that reporters were looking at.

3 Q But as I understand your testimony earlier,  
4 in answering my question, you did not remember  
5 receiving these two slips of paper in 1992?

6 A I do not.

7 Q Okay. Were you in contact with the  
8 Department of Finance and Administration in 1992 in  
9 relation to your work on Whitewater or Madison?

10 A You know, I don't know who all worked at  
11 the Department of Finance and Administration, so I  
12 don't know if I was in contact with them.

13 Q Did Mike Gauldin work with the Department  
14 of Finance and Administration?

15 A It was my understanding that Mike Gauldin  
16 was the governor's press secretary.

17 Q Do you know who Nash is?

18 A I do.

19 Q Who is Nash?

20 A Bob Nash is currently the director, I  
21 believe, of personnel in the White House.

22 Q Do you know if he held any position in the

1 state government of Arkansas, in, on or around April  
2 of 1992?

3 A I know he held a position. I actually  
4 don't recall which one he held.

5 Q Do you recall whether it was with the  
6 Department of Finance and Administration?

7 A Looking at these documents, I assume he did  
8 but I don't know for sure.

9 MR. KEKER: The question is what do you  
10 know.

11 THE WITNESS: I know he was in a position  
12 in Arkansas.

13 BY MR. DINH:

14 Q Did you talk to Bob Nash regarding issues  
15 surrounding Whitewater and Madison during the 1992  
16 campaign?

17 A I talked to Bob Nash. I don't recall the  
18 content of the conversation.

19 Q Do you know if there were any instructions  
20 from the campaign at least to Bob Nash, and maybe to  
21 other state departments, to inform the campaign of  
22 any press inquiries for records relating to

1 Whitewater or Madison?

2 A I don't know.

3 Q But you certainly did not give out any such  
4 instructions? Did you personally issue any such  
5 instructions to any employee of the state of Arkansas  
6 during the 1992 campaign?

7 A Any such instructions?

8 Q Yes. Instructions to inform you or others  
9 in the campaign of press inquiries for records  
10 relating to Whitewater or Madison.

11 A I did not instruct any state employee to do  
12 so.

13 Q Okay. Do you know of anyone in the  
14 campaign who did issue such an instruction or  
15 request?

16 A I don't know that anybody did that.

17 Q Okay. Let me refer you now to document  
18 Bates stamped LML 97.

19 MR. KEKER: Okay, we have that.

20 BY MR. DINH:

21 Q It is a memo to file, and I also refer you  
22 to a document Bates stamped simply 000635. Do you



1 have that also?

2 A Yes.

3 Q The reason I provided you with the second  
4 document which appears to be a duplication of the LML  
5 97 is that I think it is more readable, and in the  
6 interest of efficiency, I forwarded both copies, so  
7 that we can rely on the more readable version.

8 Have you ever seen this document before?

9 A Yes.

10 Q Did you see it during the 1992 campaign?

11 A No.

12 Q For the record, the document, both LML 97  
13 and 000635, at the top is labeled "memo to file,  
14 March 11, (Wednesday)," is a handwritten document.  
15 Do you recognize the handwriting, Ms. Lynch?

16 A I don't recognize the handwriting.

17 Q From the context of the document, do you  
18 know who the author of this document is?

19 A Yes.

20 Q Who is it?

21 A Jim Blair.

22 Q And let me direct your attention now to LML

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1 103 through LML 105, and again, to document Bates  
2 stamped S 010243 through S 010246. Do you have these  
3 two documents in front of you?

4 A Yes.

5 Q And again, they appear to be identical  
6 documents, and I provided you with the document  
7 labeled with the S Bates stamp series because some of  
8 the text was cut off from the document labeled LML  
9 103 through 105.

10 Have you seen this document before?

11 A Yes.

12 Q Do you remember seeing it during the 1992  
13 campaign?

14 A No.

15 Q When did you first see these two documents?

16 MR. KEKER: Well, is it sufficient for her  
17 to say that it was after she began to receive  
18 subpoenas in this matter? I mean, because that's the  
19 answer and she is not going to go further than that.

20 MR. DINH: In light of your earlier -- and  
21 I take it on the same basis of attorney work product.

22 MR. KEKER: Exactly. She has seen them in

1 connection with the investigation and the work with  
2 her lawyers.

3 MR. DINH: Okay.

4 BY MR. DINH:

5 Q Have you had a chance to study these  
6 documents, Ms. Lynch?

7 A I have read them.

8 Q You have read them. Both the handwritten  
9 version and the typed version?

10 A I have read the typed version much more  
11 recently.

12 Q Okay. I take it that they are in substance  
13 the same?

14 A I have not done that comparison.

15 Q Okay. Let me ask the question another  
16 way. Is there anything in the typed version that you  
17 have noticed to be different from the handwritten  
18 version that you have noticed?

19 A Since I haven't compared them, I haven't  
20 noticed any differences.

21 Q Do you recall the events that are  
22 memorialized in the -- I will just go ahead and refer

---

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1 to the typed version -- S 010243 --

2 MR. KEKER: I am going to object to the  
3 form of the question, because it suggests that she is  
4 adopting the notes. If you ask her about a meeting  
5 she attended with Blair, you know, why don't you ask  
6 her what she remembers about that meeting, if that's  
7 what you are interested in.

8 BY MR. DINH:

9 Q That's fine. Did you attend a meeting with  
10 Jim Blair and Jim McDougal sometime in March of 1992?

11 A Yes.

12 Q Was it March 11, 1992?

13 A Yes.

14 Q Where was the meeting taking place?

15 A In Sam Heuer's offices.

16 Q Sam Heuer is Mr. McDougal's attorney?

17 A Yes.

18 Q Do you know how the meeting came about; who  
19 arranged it?

20 A I do not.

21 Q How did you become involved to attend the  
22 meeting? Did Mr. Blair ask you?

- 1 A Yes.
- 2 Q Did he ask you well in advance or did he
- 3 ask you within the same day of the meeting?
- 4 A I don't recall.
- 5 Q Approximately at what time was the meeting?
- 6 A It was in the evening.
- 7 Q It was in the evening. And where was Sam
- 8 Heuer's office?
- 9 A It was within a mile of the Clinton
- 10 campaign offices.
- 11 Q And you went to Mr. Heuer's office together
- 12 with Mr. Blair?
- 13 A Yes.
- 14 Q And Mr. McDougal was already at Mr. Heuer's
- 15 office when you arrived?
- 16 A I don't recall.
- 17 Q Can you in your own words, just roughly,
- 18 describe the substance of the meeting?
- 19 A We discussed The New York Times story that
- 20 had been published just a few days prior, and
- 21 Mr. McDougal and Mr. Blair traded stories of
- 22 Arkansas's past. And we discussed Mr. McDougal's

- 1 conversations with Mr. Gerth, and whether he had any
- 2 additional documents.
- 3 Q "Any additional documents," additional to
- 4 what? Additional to the documents he had provided to
- 5 Mr. Gerth?
- 6 A Yes.
- 7 Q You said conversations. Was there more
- 8 than one conversation that you knew of at the time
- 9 between Mr. McDougal and Mr. Gerth prior to March 11,
- 10 1992?
- 11 A I don't recall saying conversations.
- 12 Q Do you recall how many conversations?
- 13 MR. KEKER: She said stories.
- 14 THE WITNESS: I said stories of Arkansas's
- 15 past.
- 16 BY MR. DINH:
- 17 Q I'm sorry. Do you know how many
- 18 conversations Mr. McDougal had with Mr. Gerth prior
- 19 to March 11, 1992?
- 20 A No.
- 21 Q Did you discuss the records that
- 22 Mr. McDougal had given Mr. Gerth?

- 1 A Yes.
- 2 Q Did Mr. McDougal have any records other  
3 than the ones he had provided to Mr. Gerth?
- 4 A He didn't have any with him.
- 5 Q But you indicated that he had some that he  
6 did not have with him?
- 7 A He referred to a shoe box of records. I  
8 don't know what he gave Mr. Gerth versus what he  
9 had.
- 10 Q Did you ask Mr. McDougal whether he had  
11 given everything he had to Mr. Gerth?
- 12 A I did not.
- 13 Q Did you discuss then-Governor Clinton at  
14 all?
- 15 A I did not.
- 16 Q Did Mr. Blair, during the meeting, that you  
17 witnessed?
- 18 A They told a bunch of stories. I wasn't  
19 paying much attention.
- 20 Q Referring specifically now to S 10243,  
21 about two-thirds of the way down the page, and I  
22 quote, "he said he wasn't mad at Bill, and it was

- 1 okay by him if he got elected president. He admitted  
2 that Susan McDougal and Hillary had their  
3 differences."
- 4 Do you recall Mr. McDougal saying this to  
5 Mr. Blair?
- 6 A I do not.
- 7 Q When you say you do not recall, do you  
8 think that it did not happen, or that -- or do you  
9 think it may have happened and you simply do not  
10 recall it?
- 11 MR. KEKER: That's argumentative. She said  
12 she does not recall that, and if you don't recall  
13 something, it is impossible to go beyond that.
- 14 MR. DINH: I am merely trying to see  
15 whether she has any basis to dispute what is written  
16 here on this document.
- 17 BY MR. DINH:
- 18 Q Do you have any basis, within your memory  
19 or recollection or knowledge, to dispute those two  
20 sentences that I have just read to you?
- 21 A I don't recall Mr. McDougal discussing that  
22 with Mr. Blair, so I don't know what Mr. McDougal



1 said about that.

2 Q Do you know when Mr. Blair prepared this  
3 memorandum to file?

4 A I do not.

5 Q Let me refer specifically then to the next  
6 sentence of the memorandum to file. "He said when he  
7 was under investigation, indictment and trial, if it  
8 had been Bill, McDougal would have been traveling  
9 around the state trying to raise defense money." Do  
10 you recall Mr. McDougal saying this to Mr. Blair?

11 A I don't.

12 Q Do you remember -- do you recall  
13 Mr. McDougal saying anything to Mr. Blair, saying if  
14 the tables were turned, that Mr. McDougal would be  
15 doing everything he could in order to help  
16 Mr. Clinton?

17 A I recall a long conversation of  
18 Mr. McDougal recounting information about this trial,  
19 and I didn't pay much attention.

20 Q Okay. And when you say "this trial," which  
21 trial are you referring to?

22 A Apparently he had been tried in the past.

1 Q "He" being Mr. McDougal?

2 A Correct.

3 Q Do you recall a discussion between  
4 Mr. Blair and Mr. McDougal regarding Sheffield  
5 Nelson?

6 A I do not.

7 Q Let me read it again for the record. "He  
8 said the only had one helped him was Sheffield  
9 Nelson -- everyone else took a walk, Sam said Bill  
10 helped me a lot, he even helped me prepare the  
11 opening statement. McDougal admitted that until the  
12 trial, he was very depressed and nonfunctional and  
13 not any help to Sam until the trial when he got his  
14 adrenaline again." You don't recall that  
15 conversation?

16 A I don't. I counted all the past as  
17 Arkansas stories, in which I was not interested.

18 Q Were you taking notes at this meeting, by  
19 the way, Ms. Lynch?

20 A I was not.

21 Q Did you participate in the meeting in any  
22 way, that is, did you ask Mr. McDougal any questions?

1 A I did.

2 Q What specifically did you ask Mr. McDougal?

3 A I don't recall specifically what I asked  
4 him.

5 Q What in general were the subject matters  
6 that you were interested in getting information from  
7 Mr. McDougal?

8 A What he discussed with Mr. Gerth and what  
9 kinds of corporate records he had.

10 Q Okay. Did you ask him to give you the  
11 records that he had?

12 A I don't recall if I did.

13 Q Did Mr. Blair?

14 A I really don't recall.

15 Q Okay. During this time period, that is in  
16 March of 1994, were you involved in an effort in  
17 order to gather the available records that may relate  
18 to Whitewater and Madison?

19 A Yes.

20 Q I am going to move on to the next paragraph  
21 of the memorandum to file. And just for the record  
22 it states "he indicated that Bill could at least call

1 him about the job. He said he didn't need a job and  
2 didn't want a job. He indicated that his father -- a  
3 manic-depressive who carried them back and forth,  
4 feast or famine -- had left his mother well off and  
5 he was getting his Social Security disability."

6 Do you recall a conversation during this  
7 meeting regarding Mr. McDougal saying that  
8 Mr. Clinton could at least call him about a job?

9 A I don't.

10 Q Do you recall any discussion about  
11 Mr. McDougal's mother?

12 A I don't. I didn't know these people.

13 Q I take it from your earlier answer to my  
14 questions, my last two questions, that you don't  
15 recall any discussions about Governor Clinton  
16 promising a job to Mr. McDougal's mother?

17 A No.

18 Q Do you recall a discussion during the  
19 meeting about Mr. McDougal taking medicine for his  
20 medical condition?

21 A I do.

22 Q Let me read the next paragraph for the

1 record. "I gently asked about the Prozac. He said  
2 he was taking it and wished it was available in his  
3 20s. I asked if he was taking Lithiuer too. He said  
4 yes; he said all the males on his mother's side was  
5 manic depressives and all the males on his father's  
6 side were alcoholics, and he was both." Do you  
7 recall that?

8 A I recall Mr. McDougal saying he took drugs  
9 for manic-depression. I don't recall the specific  
10 drugs he mentioned.

11 Q Did Mr. Blair ask him about his medical  
12 condition?

13 A I don't recall. I just remember him saying  
14 he was taking drugs.

15 Q Let me now direct your attention to the  
16 paragraph just above the middle of the page on the  
17 document labeled S 010245.

18 And I will read it for the record. "He  
19 said he remembered explicitly that in 1984, he had a  
20 new leather contour chair. Bill Clinton came by and  
21 came in and laid down in the chair, and his sweaty  
22 body left a permanent stain. He claimed that Bill

1 said they needed the money, that McDougal needed to  
2 give Hillary some legal work. He said he thought one  
3 lawyer could screw up deals as good as anything, but  
4 admitted that he was thinking of deeds, contracts,  
5 et cetera. He said that it wasn't two hours later  
6 that Hillary came by to set up a retainer. He said  
7 he and Susan joked about giving Hillary legal  
8 business." Do you recall this conversation with  
9 Mr. McDougal?

10 A I recall his statements about the leather  
11 chair.

12 MR. DINH: Off the record.  
13 (Discussion off the record.)

14 BY MR. DINH:

15 Q Ms. Lynch, can you tell us in your own  
16 words what you do remember regarding his statement  
17 about the leather chair?

18 A I remember he said that Bill Clinton  
19 dropped by, and was sweaty and sat down in his new  
20 leather chair and made a stain in it, and he was  
21 upset.

22 Q Do you recall any subsequent discussion

1 regarding the purpose of Mr. Clinton's visit to  
2 Mr. McDougal?

3 A I recall that McDougal said it was about  
4 legal work, but I don't recall the specifics.

5 Q Do you recall Mrs. Clinton doing work for  
6 him?

7 A Yes.

8 Q Do you recall any discussions regarding a  
9 retainer that Mr. McDougal was going to pay to  
10 Mrs. Clinton?

11 A I don't recall that level of specificity in  
12 this conversation.

13 Q Do you recall any discussion as to the  
14 substance of the legal work that Mrs. Clinton was  
15 expected to perform for Mr. McDougal?

16 A No.

17 Q And on this typewritten memo to file, on S  
18 010245, on the left-hand side, there appears to be  
19 handwritten notations. Do you recognize the  
20 handwriting?

21 A I do not.

22 Q Okay. Just for the record, the handwriting

1 says, apparently, "compare with Nelson statement  
2 December 1." Do you have any subsequent knowledge as  
3 to whose handwriting it may be?

4 A I don't.

5 Q Okay. Do you recall how this  
6 conversation -- and we will call it the leather chair  
7 conversation for simplicity. Do you recall how this  
8 leather chair conversation came about? Did  
9 Mr. McDougal just volunteer it, or did Mr. Blair ask  
10 him about it?

11 MR. KRAVITZ: Can I interrupt for a  
12 second. Viet, when you are referring to this leather  
13 chair conversation, are you talking about the  
14 conversation that Mr. McDougal said he had with  
15 Mr. Clinton, or are you talking about the  
16 conversation in 1992 involving Ms. Lynch, Mr. Blair,  
17 Mr. McDougal and Mr. Heuer?

18 MR. DINH: I am talking about the  
19 conversation in 1992 in which he referred to his  
20 conversation in 1984, apparently.

21 MR. KEKER: Well, there is nothing about  
22 1984 in this memorandum, and you haven't asked her



1 about --

2 MR. DINH: That's why I said "apparently."

3 There is something --

4 MR. KEKER: I beg your pardon, but you  
5 haven't asked her what she remembers about the date  
6 of this leather chair getting sweaty.

7 MR. DINH: Thank you for that reminder.  
8 That's why I had put in the "apparently" at the end  
9 of my question.

10 BY MR. DINH:

11 Q Ms. Lynch, do you recall the date of this  
12 conversation that Mr. McDougal said he had with  
13 Mr. Clinton?

14 A I don't. Not from -- I don't recall it  
15 from this conversation.

16 Q Okay. Do you have any basis to dispute the  
17 memorandum to file, that -- when it says in 1984?

18 MR. KEKER: Other than the fact that she  
19 doesn't recall it? That's an argumentative  
20 question.

21 BY MR. DINH:

22 Q So your answer is no?

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1 A Well, I don't recall.

2 MR. KEKER: Based on my objection, you can  
3 answer.

4 THE WITNESS: I don't recall it. I see it  
5 written here but I don't recall that he said that.

6 BY MR. DINH:

7 Q Okay. Do you know how Mr. McDougal came to  
8 tell the story to Mr. Blair and you and Mr. Heuer?

9 A I don't. He was telling a string of  
10 stories.

11 Q Okay. Do you recall whether it was in the  
12 context of an implicit or explicit threat by  
13 Mr. McDougal?

14 A A threat by Mr. McDougal?

15 MR. KEKER: Mr. McDougal made a threat and  
16 then somebody started talking about the sweaty  
17 chair?

18 BY MR. DINH:

19 Q That is, do you recall whether Mr. McDougal  
20 stated something to the effect that, if he is not  
21 taken care of, he would tell this story to the press?

22 A No.

1 Q The next paragraph on that same page, let  
2 me direct your attention to -- and I will read it for  
3 the record -- quote, "I asked him if he would quit  
4 talking to the press. He said he would but indicated  
5 he didn't want to be bashed in the press, but that he  
6 had been through a lot. That he would" -- "that he  
7 could be vicious if he thought we were mistreating  
8 him."

9 Do you recall Mr. McDougal saying that to  
10 you and Mr. Blair?

11 A I recall that he said he would stop talking  
12 to the press, and I recall that he had long and  
13 involved comments on the Arkansas Democrat's stories  
14 that followed the Gerth story.

15 Q The Arkansas Democrat being a newspaper  
16 also?

17 A Yes, right.

18 Q What was the substance of his comment  
19 regarding The Arkansas Democrat story?

20 A They had published stories, March 8 and  
21 thereafter, on Madison and McDougal generally, and he  
22 was commenting about the reporters. I just remember

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1 trying to think back in my mind about what they said.

2 Q Was he upset at these stories, Ms. Lynch?

3 A He was animated. I don't know him enough  
4 to know whether he was upset.

5 Q But the general -- was it your general  
6 impression he objected to these stories in the  
7 Arkansas Democrat?

8 A You know, I don't recall. I just recall  
9 that he was animated.

10 Q But you do recall that he stated he agreed  
11 not to talk to the press any further?

12 A I don't know if he said he agreed. I think  
13 he just said he wasn't going to --

14 Q Okay.

15 A -- but I don't recall specifically what he  
16 said.

17 Q Okay. The next paragraph in the memorandum  
18 says "we discussed his plan of suing The New York  
19 Times for defamation. He said Madison Marketing was  
20 an affiliate because it was owned by Susan and not a  
21 subsidiary of Madison Guaranty, and that money going  
22 into WWDC from Madison Guaranty would be a violation

1 of federal law, but the Times was wrong. That didn't  
2 happen. The money was from Madison Marketing."

3 Do you recall any discussion about suing  
4 The New York Times for defamation?

5 A I don't.

6 Q Let me refer your attention to document  
7 Bates stamped S 10246, as the next page of that same  
8 memorandum to file. And at the top of the page, the  
9 memo states, and I quote, "when we left, they were  
10 going to file the libel suit by Friday, and not talk  
11 to the press because it would affect the libel  
12 suit."

13 Do you recall having this understanding  
14 when you left the meeting with Mr. Blair?

15 A I don't. I wasn't paying attention to  
16 this.

17 Q I take it you rode back from Mr. Heuer's  
18 office to the campaign headquarters with Mr. Blair?

19 A No.

20 Q Did you leave together?

21 A Yes.

22 Q But you did not drive back together?

1 A We didn't drive.

2 Q You walked together?

3 A Yes.

4 Q Did you walk together all the way to the  
5 campaign headquarters?

6 A Yes.

7 Q Did you discuss your meeting with  
8 Mr. McDougal and Mr. Heuer?

9 A I don't recall what we discussed. I think  
10 he was just telling me stories of Arkansas because I  
11 didn't know all the people that they were  
12 discussing.

13 Q Do you recall having any conversation with  
14 Mr. Blair during that walk regarding his impression  
15 of the meeting?

16 A I don't.

17 Q Do you recall any subsequent conversation  
18 with Mr. Blair regarding his impression of that  
19 meeting?

20 A I recall Mr. Blair referencing that  
21 Mr. McDougal took a lot of medication because he was  
22 sick.

1 Q And when did he make this reference?

2 A I don't remember. Generally I recall

3 Mr. Blair telling me that.

4 Q Do you recall the context in which

5 Mr. Blair made this reference?

6 A No.

7 Q Let me direct your attention now to

8 documents Bates stamped LML 108.

9 MR. KEKER: Can we put these aside, these  
10 four?

11 MR. DINH: Yes. The ones we have just  
12 referred to?

13 MR. KEKER: Yes.

14 MR. DINH: Yes.

15 BY MR. DINH:

16 Q This is a letter from James B. Blair,  
17 counselor at law, March 16, 1992. I note that it is  
18 not signed. The address line is "Mr. Sam Heuer,  
19 attorney at law, Little Rock, AR. Re: Sunday phone  
20 call corrected version." Ms. Lynch, have you seen  
21 this letter before?

22 A Yes.

1 Q Did you see it in the context of the 1992  
2 campaign?

3 A Yes.

4 Q Can you describe to me when you first saw  
5 this letter, or another version of this letter?

6 A I would say within a few weeks after we  
7 visited Mr. McDougal.

8 Q Did Mr. Blair discuss with you whether he  
9 should or he would send a letter to Mr. Heuer?

10 A No.

11 Q Incidentally, do you -- the first line of  
12 this letter states, "sorry I missed your phone call  
13 on Sunday, but I believe I received the correct  
14 message."

15 Do you know what Mr. Blair was referring to  
16 in that sentence with respect to the phone call and  
17 the message?

18 A No.

19 Q Okay. Did you know whether it had to do  
20 with Mr. McDougal?

21 A No.

22 Q How did you come to learn about this letter



1 within a few weeks of your visit to Mr. McDougal?

2 A At some point Mr. Blair faxed it to me.

3 Q He faxed it to you at the campaign  
4 headquarters?

5 A Right.

6 Q Do you know whether it was before or after  
7 he sent it to Mr. Heuer?

8 A I don't know.

9 Q Did you discuss the letter with Mr. Blair?

10 A Generally that he was going to fax it to  
11 me.

12 Q Did you discuss the substance of the letter  
13 with Mr. Blair?

14 A No.

15 Q Did you know why he was going to -- why he  
16 was faxing the letter to you?

17 A Just to keep me apprised of his follow-up.

18 Q Other than a conversation with Mr. Blair,  
19 did you discuss this letter with anyone else in the  
20 campaign?

21 A The Blair letter?

22 Q Yes, the Blair to Heuer letter.

1 A I don't recall.

2 Q Did you discuss it with Mr. Heuer?

3 A I don't recall.

4 Q Did you discuss it with Mr. McDougal?

5 A No.

6 Q With Mrs. McDougal?

7 A No.

8 Q Let me direct your attention now -- you can  
9 put that document aside -- to the document Bates  
10 stamped LML 282 --

11 A Yes.

12 Q -- to 283. And for the record, the  
13 document states at the top "re: Sam Heuer's  
14 conversation with W or Wash. Post via Jim Blair;  
15 dictated to D. Blair 4/17/92." Have you seen this  
16 document before, Ms. Lynch?

17 A Yes.

18 Q Did you see this document in the context of  
19 the 1992 campaign?

20 A I don't recall.

21 Q And when did you first see this document?

22 A I don't recall if I saw it in 1992.

1 Q When did you first see this document?

2 MR. KEKER: She may have seen it in the  
3 1992 campaign. She can't say with certainty when she  
4 first saw it. That's what that means.

5 BY MR. DINH:

6 Q When is the first time you do recall with  
7 certainty that you saw this document?

8 A In connection with various investigations  
9 regarding Whitewater.

10 Q Okay. And I take it you have read the  
11 document?

12 A Yes.

13 Q And the document relates generally to a  
14 conversation that Mr. Heuer had with a reporter from  
15 The Washington Post?

16 MR. KEKER: Well, she can't give firsthand  
17 testimony about that. To characterize what the  
18 document says is beyond the scope of the  
19 investigation. Her opinion is as good as yours on  
20 that subject.

21 MR. DINH: I am asking for descriptive  
22 purposes.

1 MR. KEKER: I agree with you, if it is  
2 authentic and if it means what it says, it deals with  
3 Sam Heuer's conversation with a Washington Post  
4 reporter, and via Jim Blair dictated to D. Blair  
5 means something, and there is a date.

6 BY MR. DINH:

7 Q Do you recall having any discussions on or  
8 around April 17, 1992, with anyone in the campaign,  
9 regarding a conversation that Sam Heuer had with a  
10 reporter from The Washington Post?

11 A Not with anyone in the campaign, no.

12 Q Did you have any conversation with anyone  
13 outside the campaign?

14 A I believe I had a conversation with Jim  
15 Blair.

16 Q Actually, let me just back up for one  
17 second there and ask a clarifying question. Do you  
18 consider Jim Blair to be part of the 1992 Clinton  
19 campaign?

20 A What do you mean, "part"?

21 Q In response to my questions, with anyone in  
22 the Clinton campaign, when I say anyone in the

1 Clinton campaign, do you consider this to include Jim  
2 Blair?

3 A No. Jim Blair was a friend of the  
4 Clintons.

5 Q And what was the substance of your  
6 conversation with Jim Blair regarding Sam Heuer's  
7 conversation with The Washington Post?

8 A I don't recall independent of this  
9 document.

10 Q But you do recall having a conversation  
11 with him regarding this subject?

12 A Yes.

13 Q Okay. Do you know if you called Mr. Blair  
14 or whether he called you?

15 A I don't, because I don't recall it  
16 independent of this document. Mr. Blair would visit  
17 the campaign from time to time. So I don't recall in  
18 what context I discussed anything with him.

19 Q When you say "from time to time," can you  
20 give me a more definite estimation as to the  
21 frequency? Was it once a day?

22 A I didn't keep track of his movements, so I

---

1 don't know.

2 Q Was it your impression that it was at least  
3 once a week?

4 A I know that once a month Jim Blair would  
5 give me Diet Coke. I remember seeing him at those  
6 times.

7 Q So definitely once a month because that's  
8 when he gave you Diet Coke. Did you see Mr. Blair at  
9 the campaign other than times when he gives you Diet  
10 Coke?

11 A From time to time, when he would visit his  
12 wife.

13 Q Okay. But he also worked with you on  
14 issues relating to Whitewater, did he not?

15 A I would call him from time to time or see  
16 him or ask him questions regarding various Arkansas  
17 people.

18 Q And he would send you follow-up as to his  
19 activities relating to Whitewater, wouldn't he?

20 A He sent me the letter you referenced prior  
21 to this.

22 Q Did he send you other materials in relation

1 to his activities relating to Whitewater?

2 A I asked him to look, to perhaps to find a  
3 deed for me at one point and he found that.

4 Q Okay. Other than that specific instance,  
5 did he get you any other documents?

6 A I don't remember what documents came from  
7 Jim other than those documents.

8 Q Okay. You said that, in your earlier  
9 answer to my question, you said that other than what  
10 is contained on this document, LML 282 and 283, you  
11 had no independent recollection of the substance of  
12 the conversation you had with Jim Blair.

13 Do you have any basis to dispute what is  
14 recorded here on the document?

15 A I don't -- I didn't write this. I don't  
16 recall discussing this with Jim, other than knowing  
17 that I did discuss it with Jim.

18 MR. DINH: I think our court reporter needs  
19 a quick break so why don't we go off the record.

20 (Recess.)

21 MR. DINH: Back on the record.

22 MR. KEKER: Okay.

1 BY MR. DINH:

2 Q Ms. Lynch, did there come a time during the  
3 campaign where Mr. Heuer issued a statement to  
4 release to the press?

5 A I believe he did.

6 Q Do you know if anyone from the campaign or  
7 Jim Blair or somebody associated with the Clintons  
8 requested such a statement be made?

9 A I don't know.

10 Q Did there come a time when you came in  
11 contact with a person named Charles James?

12 A Yes.

13 Q Who is Charles James?

14 A I knew Charles James to be a friend of R.D.  
15 Randolph.

16 Q Who is R.D. Randolph?

17 A R.D. Randolph was a Arkansan. I don't  
18 really know who R.D. Randolph is.

19 Q Do you know what role he played with  
20 respect to the Whitewater Development Corporation?

21 A Who is the "he"?

22 Q Charles James.



1 A At one time he was its accountant.

2 Q And when did you come in contact with  
3 Charles James?

4 A In February of 1992.

5 Q And what were the circumstances?

6 A I was trying find additional documents  
7 about the corporation, and it was suggested that he  
8 might have some as the Whitewater accountant.

9 Q Did you call Mr. James regarding the  
10 documents?

11 A I don't recall who contacted who.

12 Q Okay. But you did come in contact with  
13 him?

14 A I did speak with him.

15 Q Was this over the telephone, or did you  
16 contact him in person?

17 A Both.

18 Q Okay. Did he have any documents relating  
19 to Whitewater?

20 A As I recall, he had a few isolated  
21 accounting worksheets.

22 Q Okay. By "accounting worksheets" do you

1 mean ledger type of documents?

2 A I call them accounting worksheets.

3 Q Were these handwritten worksheets?

4 A Yes.

5 Q Were they his worksheets; his handwriting?

6 A I don't know. They were represented to be  
7 the corporation's.

8 Q Okay. But you don't know who prepared  
9 them?

10 A The ones that I saw, I believe he told me  
11 he prepared.

12 Q Other than this time when you were in  
13 contact with him for the purpose of obtaining the  
14 documents that he may have had with respect to  
15 Whitewater, did you come in subsequent contact with  
16 Mr. James on another matter?

17 A On another matter?

18 Q I mean for a different purpose.

19 A I talked with him from time to time about  
20 Whitewater.

21 Q Okay. When was the next time that you can  
22 recall that you talked to Charles James?

1 A I don't know specifically. I know I talked  
2 with him in February of 1992 and into March.

3 Q Into March. So the first time was for the  
4 purpose of obtaining Whitewater documents. Do you  
5 recall the purpose of the subsequent times that you  
6 talked to him?

7 A I believe I continued to try to obtain  
8 whatever Whitewater documents were in existence.

9 Q Okay. Did you call, did you come in  
10 contact with Mr. James the day after the Gerth  
11 article appeared in The New York Times?

12 A I don't recall what day I talked with him.

13 Q Did you talk with Mr. James relating to the  
14 Gerth article in The New York Times?

15 A Yes.

16 Q Do you know whether you talked to him in  
17 person, or in -- or over the telephone regarding the  
18 Gerth article in The New York Times?

19 A I believe both.

20 Q Do you recall how many times?

21 A I don't.

22 Q Let me direct your attention now to

1 document Bates stamp LML 89, and 90, and document  
2 Bates stamped JML 2755 and 2756, and document Bates  
3 stamped 2885 through 2888.

4 A Yes.

5 Q For the record, I would identify these as  
6 three documents at the top of which states "statement  
7 of Charles E. James." Did there come a time where  
8 Mr. James was requested to prepare statements in  
9 relation to his knowledge of Whitewater Development  
10 Corporation?

11 A There was time when he prepared a  
12 statement. I don't know if he was requested to.

13 Q You did not request him to prepare  
14 statements?

15 A I might have. We discussed a statement. I  
16 don't know if I requested or if he offered.

17 Q Okay. And do you recall whether he signed  
18 one statement or several statements that are  
19 different from each other?

20 A I don't recall.

21 Q Okay. Let me refer to the specific  
22 documents that I've asked you to put in front of

1 you. Have you had a chance to look at these  
2 documents?

3 A I have not.

4 Q Why don't you take a minute and take a look  
5 through the three different documents.

6 MR. KEKER: She got these a few minutes  
7 before the deposition began.

8 MR. DINH: I know. I faxed this to you  
9 this afternoon, and I apologize for not including  
10 them in the packet I sent to you yesterday.

11 MR. KEKER: Do you want her to read the  
12 declarations?

13 MR. DINH: Yes, study them until she is  
14 comfortable with them.

15 MR. KEKER: Well, I mean, that's a  
16 different level. If she needs to memorize them, that  
17 will take longer. If you are going to ask her  
18 whether or not she remembers the particular  
19 incidents, that will be a lot simpler.

20 MR. DINH: I will ask her to compare the  
21 statements as they relate to each other.

22 MR. KEKER: All right, she'll do this, but

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1 she is not going to do that -- I mean, the statements  
2 as compared to one another are best determined by  
3 whoever reads both statements. She has no particular  
4 expertise on that.

5 (Pause.)

6 THE WITNESS: I have skimmed them.

7 BY MR. DINH:

8 Q Okay, just to save time, all three  
9 statements are -- all three are labeled "statement of  
10 Charles E. James," and all three are signed at the  
11 bottom by Charles E. James. And I would represent to  
12 you that he has identified in his deposition that  
13 that is his true signature, and the three are  
14 different, are different from each other, just to  
15 move things along.

16 Do you recall Mr. James preparing or  
17 signing different statements?

18 A I don't have three signed statements. I  
19 have a total of seven pieces of paper in front of me,  
20 in terms of statement pieces of paper. Those numbers  
21 are LML 0089, it looks like, attached to a non-Bates  
22 stamped document, JML 2885, which is a one-page

1 document; JML 2755 and JML 2756 which is a two-page  
2 document.

3 Q You do not have JML 2886 through 2888?

4 A I have not as a -- I have worksheets --  
5 288, okay.

6 Q There is the worksheet and then a  
7 continuation -- what appears to be a continuation of  
8 JML 2885?

9 A I see.

10 Q Okay.

11 A I didn't get that to read.

12 Q And that's signed, at the bottom, that's  
13 signed by Charles E. James. And with respect to the  
14 document that is next to LML 89, the next page is LML  
15 90 but the Bates stamp is way down at the bottom of  
16 the corner. It may have been lost in the fax  
17 machine.

18 A Okay. I have skimmed them now.

19 Q Do you recall him preparing and signing  
20 three separate statements?

21 A I recall the statement on March 8. I  
22 recall discussing other statements with him, but I

1 don't recall particulars of other statements.

2 Q Okay. And by "the statement on March 8,"  
3 you are referring to the one that's Bates stamped LML  
4 89 and continuing over to LML 90?

5 A Correct.

6 Q Do you know who prepared the statement?  
7 Did you or another member of the campaign staff  
8 actually prepare and type the statement?

9 A Which statement are you referring to?

10 Q The one that you do recall, the March 8,  
11 1992 one?

12 A I believe I worked with Mr. James on that  
13 statement.

14 Q Did you write -- did you actually  
15 physically type the statement?

16 A Yes.

17 Q Did there -- was there -- when you said you  
18 worked with him, what do you mean?

19 A It is his statement. He told me what, you  
20 know, what he did.

21 Q Was there -- did there come a time when you  
22 or another member of the campaign staff presented him



1 with a statement to sign and he would not sign it?

2 A I don't recall that.

3 Q You stated in answer to my earlier question  
4 that you recalled discussing the other two  
5 statements, that is JML 2755 and 2756, JML 255  
6 through 288?

7 MR. KEKER: No, she said she only remembers  
8 the March 8 statement.

9 THE WITNESS: I remember discussing  
10 statements generally, but I don't recall if it was  
11 these specific ones.

12 BY MR. DINH:

13 Q What was the nature of your discussions  
14 regarding statements generally?

15 A What did he do, could I write it up in a  
16 form of a statement. Could he explain what he did on  
17 Whitewater.

18 Q Do you recall preparing or writing up  
19 different statements?

20 A I don't. I just recall the March 8 piece.  
21 I did recall discussing statements with Mr. James,  
22 but I only recall writing up the March 8 one.

1 Q Okay. Do you know of anyone else, in the  
2 campaign, who are friends of the Clintons, who worked  
3 with you, with Mr. James, in relation to these  
4 statements?

5 A I recall people in the room, but I don't  
6 recall them working with me, with Mr. James.

7 Q Okay. Do you recall if Mr. Jim Blair was  
8 one of those persons?

9 A Mr. Blair knew Mr. James, yes.

10 Q Did he discuss with him the statements?

11 A I don't remember of Jim discussed with  
12 Mr. James.

13 Q Who else worked with Mr. James on the  
14 statement?

15 A I don't recall other people working with  
16 Mr. James. I recall, when I was working with  
17 Mr. James, that other people were in the room.

18 Q Who else were these people in the room?

19 A Roger Martin and Diane Blair.

20 Q Do you know whether they prepared  
21 statements for Mr. James to sign?

22 A I don't recall. I would doubt it.

1 Q Do you recall whether Mr. Blair prepared  
2 estimates for Mr. James to sign?

3 A I don't know.

4 Q You said you recalled discussing statements  
5 with Mr. James. Do you recall whether there were  
6 discussions as to the need for more than one  
7 statement?

8 A I recall asking Mr. James what he did for  
9 Whitewater and asking for his explanation about  
10 various worksheets. As we were discussing that, I  
11 recall discussing with him writing up what he did so  
12 we would have some kind of memorialization. That's  
13 what I recall.

14 Q And the only thing you recall writing up is  
15 the March 8, 1992 statement; correct?

16 A Correct.

17 Q Let me just close the loop on this one.  
18 Have you seen JML 2755 and 2756 before today?

19 A I don't recall seeing it. I don't recall.

20 Q Okay. Have you seen documents JML 2885,  
21 2886, 2888 before today?

22 MR. KEKER: Say the numbers again, please.

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1 BY MR. DINH:

2 Q 2885 which is the first page of the  
3 statement by Charles E. James; JML 2886 which appears  
4 to be an accounting worksheet; JML 2887, another  
5 handwritten accounting worksheet; and then JML 2888,  
6 which is page 2, that appears to be a statement by  
7 Charles E. James and signed by Charles E. James.

8 A I have seen accounting worksheets that  
9 Mr. James showed me. I don't know if this is the  
10 accounting worksheet he showed to me.

11 Q What about the accounting worksheet in JML  
12 2 -- what about the statements in JML 2885 and 2888,  
13 independent of the worksheets --

14 A This looks familiar. I can't place when I  
15 saw it.

16 Q Are you still there?

17 A Yes.

18 Q Were you going to say something else?

19 A I said this looks familiar. I can't place  
20 when I saw it.

21 Q I thought I heard something else and it  
22 sounded like you were cut off. I'm sorry. I

1 apologize for that.

2 Do you recall discussing with anyone in the  
3 campaign the need for multiple statements by  
4 Mr. James?

5 A I didn't think there was a need, so I  
6 recall trying to find out what Charlie James did and  
7 what he knew and what documents he had.

8 Q I guess the point of all the questions --  
9 and I will just pose the overall question to you and  
10 feel free to say you don't know -- is that -- that is  
11 going on in my mind, is why are there three different  
12 statements from Charles James, all signed by Charles  
13 James?

14 MR. KEKER: I take it you're asking for her  
15 personal knowledge of the facts, not her opinion or  
16 her best guess?

17 MR. DINH: Exactly.

18 MR. KEKER: If you have information which  
19 allows you to answer that question factually, please  
20 do.

21 THE WITNESS: I don't know.

22 BY MR. DINH:

1 Q Great. You can put away those documents  
2 now.

3 Let me refer you to document Bates stamped  
4 LML 0001, which is a memorandum from "Loretta Lynch  
5 to David Wilhelm/Bruce Reed, dated 2/18/92, re:  
6 HRC/McDougal loan issue."

7 And I note there is handwritten on the top  
8 upper right corner of the page, that printed draft,  
9 and the memorandum appears to run through LML 0013.

10 A Yes, I have it.

11 Q Okay. Do you recognize this document,  
12 Ms. Lynch?

13 A Yes.

14 Q Did you prepare this document?

15 A Yes.

16 Q Is the date on it correct?

17 A I don't know.

18 Q Do you recall that it was approximately on  
19 or about 2/18/92 that you prepared a document similar  
20 to this?

21 A Well, this is actually a running note to  
22 myself.

- 1 Q Okay. This is dated 2/18/92 in the top  
2 right-hand corner; correct?
- 3 A The top right-hand corner is dated 2/18/92,  
4 but throughout the document, there are other dates.
- 5 Q And it is addressed to David Wilhelm and  
6 Bruce Reed?
- 7 A It is addressed to them.
- 8 Q Who is David Wilhelm?
- 9 A He was the campaign manager for the Clinton  
10 campaign.
- 11 Q And Bruce Reed?
- 12 A He was the domestic policy head for the  
13 Clinton campaign, the policy head for the Clinton  
14 campaign.
- 15 Q These are people you reported to?
- 16 A Yes.
- 17 Q Did you send this to Mr. Wilhelm and  
18 Mr. Reed?
- 19 A No.
- 20 Q Did you send a subsequent version of it to  
21 Mr. Reed and Mr. Wilhelm?
- 22 A No.

- 1 Q Did you send this document to anybody else?
- 2 A I don't believe so.
- 3 Q So this is truly just a running document  
4 for your internal use, for your personal use?
- 5 A Correct.
- 6 Q Okay. Let me direct your attention to page  
7 2 of that document, Bates stamped LML 0002. And let  
8 me direct your attention to the paragraph, right  
9 above the middle of the page, "Gary Bunch, Kingston,  
10 phone number, period, executive VP of the bank at  
11 that time name was on the loan."
- 12 Do you know who Gary Bunch is?
- 13 A He was the executive VP of the bank from  
14 which one of the loans was taken.
- 15 Q "One of the loans," what loans are you  
16 talking about?
- 17 A One of the loans involved with Whitewater.
- 18 Q Okay. Do you know whether it was a loan  
19 taken out by Bill or Hillary Clinton personally, or  
20 was there a loan to Whitewater Development  
21 Corporation?
- 22 A I don't recall which loan exactly Gary



1 Bunch was involved with.

2 Q Okay. And was this the Bank of Kingston?

3 A I don't remember. I am reading these  
4 notes. I don't know if it was the Bank of Kingston  
5 or the bank referred to in the prior paragraph. I  
6 don't know. Well, it says Kingston, but I assume  
7 that's what that means.

8 Q Do you know whether it was subsequently --  
9 the name was subsequently changed to Madison Bank &  
10 Trust?

11 A What name?

12 Q Bank of Kingston?

13 A I have heard that. I don't know that for a  
14 certainty.

15 Q Okay. Did you talk to Mr. Bunch in  
16 preparation, prior to the preparation of this  
17 document?

18 A I don't know if I talked to Mr. Bunch prior  
19 to the preparation of this document or if someone was  
20 giving me his name. These are my notes from  
21 everything I knew.

22 Q Let me direct your attention, three

1 paragraphs down from that paragraph, it starts "Gary  
2 Bunch said The New York Times reporter called him on  
3 2/18."

4 Does that refresh your memory whether you  
5 talked to Mr. Bunch?

6 A It doesn't. I don't know if I talked to  
7 Mr. Bunch or if someone told me that's what Gary  
8 Bunch told them.

9 Q Do you recall who it was that may have told  
10 that you Mr. Bunch told them this?

11 A No. I was getting information from whoever  
12 knew anything about Arkansas.

13 Q Okay. Let me direct your attention now to  
14 the next two pages of that memorandum, LML 0003, to  
15 the bottom of the page, under the heading, "other  
16 McDougal potential conflict issues," I will read the  
17 sentence, and it will carry over to the top of page  
18 LML 0004.

19 "McDougal story -- after the defeat, Jim,  
20 I need," dollar sign, "HRC trying to get going at the  
21 Rose Law Firm. Can you help us out?"

22 Do you recall what that refers to?

1 A I believe that that is what we heard  
2 McDougal was saying to Mr. Gerth.

3 Q And that is -- and can you put in your own  
4 words what it was that you were hearing, to sort of  
5 fill in the ellipses here on this sentence?

6 A That McDougal was talking to a New York  
7 Times reporter about Whitewater.

8 Q And specifically regarding -- "after the  
9 defeat, Jim, I need," dollar sign, "HRC trying to get  
10 going at the Rose Law Firm can you help us out"; what  
11 does that refer to?

12 A Going on and reading that sentence, it  
13 looks like McDougal was saying that he had a  
14 conversation with Bill and Hillary Clinton in 1981.

15 Q Regarding?

16 A Helping them out.

17 Q Helping them out by retaining the Rose Law  
18 Firm, or in another way?

19 A I don't know. These notes are unclear.

20 Q Okay. Do you recall what you -- the issues  
21 surrounding this question at the time?

22 MR. KEKER: I didn't understand that

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1 question.

2 MR. DINH: Okay.

3 BY MR. DINH:

4 Q Other than the notes, do you recall what  
5 the issue is that you are talking about here?

6 A No, these are a collection of any  
7 information I had, that I grouped under a very loose  
8 category called Whitewater.

9 Q I am talking specifically about that  
10 paragraph. That is "McDougal story -- after the  
11 defeat, Jim, I need," dollar sign, "HRC trying to get  
12 going at the law Rose Law Firm. Can you help us  
13 out." And the next sentence, "from a chronological  
14 point of view they couldn't have started in '81  
15 because he didn't own the Rose Law Firm in 1981"?

16 A That's what makes it nonsensical; no one  
17 owned the Rose Law Firm except for the partners of  
18 the Rose Law Firm.

19 Q Do you know what the first sentence refers  
20 to?

21 MR. KEKER: Let's make sure we are -- which  
22 first sentence?

1 BY MR. DINH:

2 Q The first sentence I said, "McDougal  
3 story -- after the defeat, Jim, I need," dollar sign,  
4 "HRC trying to get going at the Rose Law Firm. Can  
5 you help us out?"

6 MR. KEKER: Okay, you can answer the  
7 question if you have specific factual knowledge. If  
8 you are simply guessing and trying to interpret notes  
9 that you --

10 THE WITNESS: I wrote these notes four  
11 years ago and got rumors and information from all  
12 sorts of sources, and I don't know what this  
13 specifically refers to.

14 BY MR. DINH:

15 Q Okay. These are your notes, though, aren't  
16 they?

17 A They are my -- it is more of a -- I was a  
18 scrivener taking down what people were telling me  
19 about this issue.

20 Q Okay. And "this issue" being what?

21 A At the time I thought it was called  
22 Whitewater --

1 Q Okay.

2 A -- but as it turned out there were several  
3 issues involved with the issue of Whitewater.

4 Q And so you are telling us that you do not  
5 know what "after the defeat, Jim, I need," dollar  
6 sign, "HRC trying to get going at the Rose Law Firm  
7 can you help us out," you do not -- you are telling  
8 us you do not know what that refers to?

9 A It refers to what McDougal's story is, it  
10 says "McDougal story," dash, and that's what it  
11 refers to.

12 Q And I am asking specifically, what exactly  
13 is that story?

14 A I don't know. These are random notes.

15 Q Okay. The last sentence of that paragraph  
16 which I have not read -- I will now -- says "Jim  
17 McDougal has been declared mentally disabled by the  
18 U.S. government. He is on Prozac; he is on  
19 lithium."

20 Do you know where you had -- where you got  
21 this source of information, the information that was  
22 contained in the sentence I just read to you?

1 A I think it was generally known in Arkansas  
2 that he had had a mental breakdown. It had been in  
3 the press.

4 Q Okay. Is that where you got it, in the  
5 press, or did someone else tell you about it?

6 A I don't recall. I just know that I knew  
7 generally.

8 Q Okay. I will refer your attention to the  
9 next paragraph on LML 0004, the first full paragraph,  
10 "1982, hired Vince Foster of Rose Law Firm to  
11 represent them in a civil suit brought by the First  
12 National Bank -- re: breach of contract removing the  
13 main office. Rose represented them and they lost."

14 Do you recall what that paragraph refers  
15 to.

16 MR. KEKER: Other than what she's written  
17 down there, is the question? Do you have any  
18 independent knowledge of the events described in this  
19 note?

20 MR. DINH: Yes, that's my first question,  
21 yes.

22 THE WITNESS: No.

1 BY MR. DINH:

2 Q Do you know who gave you this information?

3 A I don't know because it is not reflected.  
4 At some point I did reflect who gave me the  
5 information.

6 Q Okay. Now, it says --

7 A I believe this is still part of McDougal's  
8 story.

9 Q You believe this is part of McDougal's  
10 story?

11 A I don't know.

12 Q "1982 hired Vince Foster" -- these are your  
13 notes now. I am asking you to make a conjecture  
14 here. Who hired Vince Foster?

15 A I can't make a conjecture.

16 Q Do you interpret your notes to say that  
17 that means McDougal hired Vince Foster?

18 MR. KEKER: I will object to that. You and  
19 I and Ms. Lynch can interpret these notes, or a trier  
20 of fact, or your Chairman, or anybody else. The  
21 question is, can she -- does she have anything to add  
22 to the interpretation of what's there, other than



1 what's there?

2 MR. DINH: And I am asking for her  
3 interpretation, John. I mean -- and we can take it  
4 or leave it.

5 MR. KEKER: But her interpretation as a  
6 person who has been inundated by television reports,  
7 newspaper articles about Senator D'Amato and the  
8 efforts that Senator D'Amato is making to make this a  
9 big deal, and the charges of unfairness about this  
10 and that, and the substance of it.

11 We have all been exposed to all that  
12 stuff. And you could just as well ask me what this  
13 means as you can ask her, if she doesn't have any  
14 independent recollection. I think it is pretty well  
15 known what the note refers to but that's just kind of  
16 my opinion, knowing something about this.

17 MR. DINH: I think it is pretty plain too,  
18 so I will pass on that question.

19 MR. KEKER: She is no better at it then we  
20 are.

21 MR. DINH: She did write the note.

22 MR. KEKER: Unless she has special

1 information or can remember why she wrote the note.  
2 Maybe I ought to come back there and testify.

3 BY MR. DINH:

4 Q Let me refer your attention then to LML  
5 0005. And let me direct your attention to the middle  
6 of the page where it says "Gerth called Web 2/18:  
7 Focus on three issues." Who is Gerth?

8 A Jeff Gerth.

9 Q That's The New York Times reporter?

10 A Yes.

11 Q And Web?

12 A Hubbell.

13 Q That's Webster Hubbell?

14 A Yes.

15 Q And "three issues, one Rose Law Firm  
16 representing Madison -- HRC brought it to the firm."  
17 Let me ask you this question, do you recall or do you  
18 have any information as to how -- where you got this  
19 information from?

20 A I believe these were Gerth's questions and  
21 suppositions.

22 Q As he relayed them to Webster Hubbell?

1 A Correct.

2 Q Did Mr. Hubbell have a conversation with  
3 you regarding these issues?

4 A I have had a couple of conversations with  
5 Mr. Hubbell regarding these issues.

6 Q Was this one of them?

7 A I don't know the specific dates.

8 Q And when you say these are suppositions, do  
9 you mean the portion in the parentheses I just read  
10 to you, "HRC brought it to the firm"?

11 A These are Gerth suppositions.

12 Q Let me continue then with point number two,  
13 "any firm policy re: HRC doing work where she had  
14 direct contact with the state (file indicates that  
15 HRC had some minimal contact with B. Bassett)."

16 Who is B. Bassett?

17 A Beverly Bassett Schaffer.

18 Q And is this portion part of Mr. Gerth's  
19 inquiry to Mr. Hubbell?

20 A I don't know. The way I read this is that  
21 the securities department file indicates, but I  
22 don't -- I don't know if this is Gerth telling that

1 to Web. That's the way I read this.

2 Q "This" being the portion in the  
3 parentheses?

4 A Yes.

5 Q "File indicates that HRC had some minimal  
6 contact with B. Bassett"?

7 A Right.

8 Q And you do not know whether this was  
9 information that Gerth relayed to Web, or information  
10 you had from another source that you put in to your  
11 memorandum?

12 A This is myself talking with Web at some  
13 point --

14 Q Okay.

15 A -- regarding Gerth calling him on 2/18.

16 Q Okay. And specifically, with respect -- I  
17 just want to understand your testimony with respect  
18 to the portion that was in the parentheses. That is,  
19 "the file indicates that HRC had some minimal  
20 contact with B. Bassett," you do not -- do you know  
21 where that information came from?

22 A I do not.

1 Q It could have -- I just want to identify  
2 the sources. It could have come from Gerth telling  
3 Webster Hubbell; correct?

4 A Yes.

5 Q It could have come from Mr. Web Hubbell  
6 studying the file himself, could it have?

7 A What file is that?

8 Q Whatever file it refers to there, "file  
9 indicates," you stated earlier that you believe that  
10 to be the Securities Commission file?

11 A That would have been at the Securities  
12 Commission.

13 Q Okay. Could this information have come  
14 from Mr. Hubbell doing independent review of that  
15 file?

16 A As I recall, Mr. Hubbell did not review the  
17 file.

18 Q Okay. Did you review that file?

19 A Yes.

20 Q Okay. So could it be a note to yourself  
21 regarding the contents of that file?

22 A It could be.

1 Q Okay. Did you review that file prior to  
2 February 18?

3 A I don't recall when I reviewed the file.  
4 It was at some point in February.

5 Q February 18 you testified earlier was the  
6 date of the New Hampshire primary; correct?

7 A I believe so.

8 Q And do you recall whether you reviewed the  
9 Securities Commission file prior to the New Hampshire  
10 primary or after the New Hampshire primary?

11 A I don't recall.

12 Q Let me direct your attention then to the  
13 next page, bottom of the page, LML 0006, and under  
14 the heading, above that, a little above, is  
15 "documents/information compiled," and the bottom of  
16 the page says, "bank examiner's report on the 1981  
17 loan period from bank commissioner's office or  
18 Beverly Bassett's office. (Gauldin/Field/Bunch)."

19 Do the names in the parentheses indicate  
20 that they are potential sources of the information  
21 that you needed?

22 A These were my notes to myself about

1 documents to follow up on, information to compile.

2 Q Right.

3 A And these are my notes to myself about  
4 suppositions of where I could go to ask for the  
5 information.

6 Q And those suppositions are contained in the  
7 names that are in the parentheses at the end of the  
8 sentence; correct?

9 A Correct.

10 Q And Bunch is one of them?

11 A Yes.

12 Q And that refers to Gary Bunch?

13 A Yes.

14 Q Did you contact Mr. Bunch in order to get  
15 this loan file?

16 A I don't recall.

17 Q Do you recall any conversations with  
18 Mr. Bunch?

19 A I don't recall if I had conversations with  
20 Mr. Bunch, or if others did and reported them to me.

21 Q Okay. But you definitely -- but you did  
22 have information from Mr. Bunch; is that what I

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1 understand?

2 A I did not have this information from  
3 Mr. Bunch.

4 Q But you had other information from  
5 Mr. Bunch?

6 A I know he was on my list to talk to. But I  
7 don't remember if I actually got information from  
8 him.

9 Q Do you know of anybody else at the campaign  
10 or associated with the Clintons that is a friend or a  
11 colleague of Mr. and Mrs. Clinton, that got  
12 information -- was in contact with or got information  
13 from Gary Bunch?

14 A I just don't remember. I do remember that  
15 I didn't get this information.

16 Q Okay. Let me direct your attention now to  
17 LML 0012, the next to last page of that memorandum,  
18 just below the middle of the page. Directing your  
19 attention to the paragraph there, and I will read it  
20 in full for the record while you study it.

21 "Hiring of the Rose Law Firm. Exactly how  
22 long was the Rose Law Firm hired for? How much was



1 the retainer? According to HRC -- Latham asked  
2 Massey to represent Latham. McDougal said only if  
3 HRC were involved. Talked to Rick Massey about this  
4 partner at Rose Law Firm."

5 Now, this particular portion of the note  
6 does not have a helpful heading. Do you know what  
7 this refers to?

8 A Yes, it was a run-on from my conversation  
9 with Susan Thomases, starting on LML 0010.

10 Q 0010?

11 A Yes.

12 Q Okay. And the basis for that is, on 0010,  
13 it states "2/21/92, TT." Does that mean telephone  
14 call?

15 A Yes, that means talked to.

16 Q Talked to, okay. "Susan Thomases talked to  
17 Gerth today," and that is part of that conversation?

18 A Right.

19 Q And directing your attention back to LML  
20 0012, "hiring of the Rose Law Firm," were these  
21 questions that you had for Ms. Thomases?

22 A I believe we discussed questions. I don't

1 know if these were her questions or my questions.

2 Q The next paragraph, "according to HRC," did  
3 you talk to Mrs. Clinton about this issue?

4 A Not at this point.

5 Q So is it a reasonable assumption "according  
6 to HRC" refers to what Ms. Thomases told you?

7 A I don't know if this came up in my  
8 conversation with Susan.

9 Q And this says "according to HRC," and you  
10 were not in contact with Mrs. Clinton at that time?

11 A Not on this matter.

12 Q Who is Latham?

13 A John Latham.

14 Q And who is -- do you know whether he worked  
15 for Madison?

16 A I recall that he either worked for Madison  
17 or was on its board of directors.

18 Q And Massey?

19 A He was, as it says here, a partner at the  
20 Rose Law Firm.

21 Q This states "according to HRC, Latham asked  
22 Massey to represent Latham. McDougal said only if

1 HRC were involved." And you stated you were not in  
2 contact with Mrs. Clinton at that time; correct?

3 A Right.

4 Q And so this information came from  
5 Ms. Thomases?

6 A I believe that first sentence came from  
7 Ms. Thomases. I don't know if the second sentence  
8 came from what Gerth said McDougal said.

9 Q "The second sentence" being which sentence?

10 A "McDougal said only if HRC were involved."

11 Q What gave you the idea that this was what  
12 Gerth said McDougal said?

13 A Because Susan started the conversation,  
14 back on 0010, with "talked to Gerth today," and had  
15 questions through this about what Gerth had said  
16 McDougal said, or what Gerth had said generally.

17 Q And you do not recall whether -- you do not  
18 recall this specific comment by Ms. Thomases during  
19 that conversation?

20 A I recall that we agreed that we would talk  
21 to Rick Massey about the representation.

22 Q Did you talk to Rick Massey?

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1 A I don't recall if I talk to Rick Massey, or  
2 someone else did and told me.

3 Q Do you know who that someone else was?

4 MR. KEKER: Does she remember being told to  
5 talk to, or that somebody else talked to Rick Massey;  
6 is that the question?

7 MR. DINH: Exactly.

8 THE WITNESS: I recall discussing with Web  
9 Hubbell Rick Massey's representation of the Rose Law  
10 Firm. I don't recall -- and I recall speaking with  
11 Ms. Thomases about someone should talk to Rick  
12 Massey.

13 BY MR. DINH:

14 Q You did not talk to Rick Massey?

15 A I don't recall.

16 Q Okay. Do you recall whether Mr. Hubbell  
17 told that you he talked to Rick Massey?

18 A I know that Mr. Hubbell talked to Rick  
19 Massey. He told me that.

20 Q He told you that?

21 A Yes.

22 Q Mr. Hubbell told you he talked to Rick

1 Massey?

2 A At some point, yes.

3 Q What about Ms. Thomases, did she tell you  
4 she talked to Rick Massey?

5 A I don't recall who was talking to Rick  
6 Massey. I mean, I just don't remember who did. I  
7 know that someone talked to him of the three of us.

8 Q Okay. And Mr. Hubbell, you recall, told  
9 you that he talked to Rick Massey?

10 A Yes.

11 Q And you don't -- do you recall Ms. Thomases  
12 making a similar statement to you?

13 A I don't remember.

14 Q Let me direct your attention now to  
15 document Bates stamped LML 0075, which is a March 8,  
16 '92 "fact sheet on Whitewater Development." And on  
17 the top it says "final." And it runs through LML  
18 0078. It is a four-page document.

19 Do you have that in front of you?

20 A No, because it was out of the order that  
21 you gave it to me.

22 Q I apologize.

1 A What was the number?

2 Q LML 0075.

3 A Okay.

4 Q Do you recognize this document?

5 A Yes.

6 Q Did you prepare this document?

7 A Yes.

8 Q Was this document made public?

9 A Yes.

10 Q Is the date on it the correct date it was  
11 made public?

12 A Yes.

13 Q Let me direct your attention to page 3 of  
14 that document, LML 0077, paragraph 5.

15 A Yes.

16 Q And the indented quote is "the new  
17 commissioner approved two novel proposals to help  
18 keep the savings and loan alive that were offered by  
19 Hillary Clinton, Governor Clinton's wife and a  
20 lawyer. She and her firm had been retained to  
21 represent the savings institution."

22 I take it that is a quote from the Gerth

1 article?

2 A Correct.

3 Q And the point of this fact sheet was to  
4 point out the inaccuracies in that article?

5 A Yes.

6 Q Underneath that quotation, you have in  
7 caps -- and that's what I am going to direct your  
8 attention to -- "the Rose Law Firm (of which Hillary  
9 Clinton is a partner) was retained to represent  
10 Madison Guaranty. The business was brought to the  
11 firm not by Hillary Clinton but by Richard Massey,  
12 long-time friend of John Latham, Madison CEO.  
13 Hillary Clinton did not intervene or attempt to  
14 influence any matter concerning Madison Guaranty with  
15 the State Securities Commission or any other state  
16 regulator. Rick Massey, not Hillary Clinton, was the  
17 Rose Law Firm lawyer who met with state regulators to  
18 discuss procedures to improve the S&L's financial  
19 reserves, procedures that were being used by the  
20 federal government to stabilize federal S&Ls at the  
21 time they were prepared by Massey."

22 Do you recall preparing this particular

1 statement?

2 A Yes.

3 Q Do you recall from whom you got the  
4 information which went into this statement?

5 A From a variety of sources, including a  
6 review of documents.

7 Q Did you -- what documents did you review,  
8 do you recall?

9 A I looked at the Securities Department  
10 file.

11 Q Did you review any records of billings by  
12 the Rose Law Firm to Madison Guaranty?

13 A No.

14 Q Did you review any summary of any such  
15 records?

16 A No.

17 Q Did you talk to anyone regarding any such  
18 billing records?

19 A I spoke with Web.

20 Q Okay. And did Mr. Hubbell indicate to you  
21 that he had reviewed such records?

22 A Yes.



1 Q And what was his -- and what -- what  
2 exactly was his statement to you regarding those  
3 records?

4 A I don't know exactly. I know we discussed  
5 who brought the business in, and who did the work.

6 Q Okay. And what did Mr. Hubbell tell you  
7 regarding those two subjects?

8 A I don't recall specifically, but it was  
9 information that would support my language in this  
10 response.

11 Q Okay. So "the business was brought to the  
12 firm not by Hillary Clinton but by Richard Massey,  
13 long-time friend of John Latham, Madison CEO," that  
14 relates to the first topic you talked to Mr. Hubbell  
15 about; correct?

16 A Yes. I also spoke with Ms. Thomases about  
17 that.

18 Q Did you talk to Hillary Clinton about this?

19 MR. KEKER: What's "this"?

20 MR. DINH: About this particular sentence,  
21 "who brought in the business to the Rose Law Firm."

22 MR. KEKER: Two different things. One is

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1 talking about the sentence that's written and the  
2 other is did you talk to Hillary Clinton about who  
3 brought the business into the Rose Law Firm.

4 She can answer both, but --

5 MR. DINH: Why don't we take the first one  
6 first.

7 BY MR. DINH:

8 Q Did you talk to Hillary Clinton about who  
9 brought in the business?

10 A I don't remember discussing that with her.

11 Q Okay.

12 MR. DINH: We will take a break for the  
13 court reporter to change her tape. Off the record.

14 (Discussion off the record.)

15 BY MR. DINH:

16 Q What about the second question that  
17 Mr. Kecker had pointed my attention to, did you talk  
18 to Mrs. Clinton about this sentence as written?

19 A No. I don't recall --

20 Q Okay.

21 A -- doing so.

22 Q But you indicated that you talked to

1 Mr. Hubbell and Ms. Thomases about this matter;  
2 correct?

3 A About the issue.

4 Q About the issue?

5 A Yes.

6 Q Was it in connection with the preparation  
7 of this document, that Mr. Hubbell told that you he  
8 had talked to Richard Massey?

9 A It was in connection with the general  
10 story.

11 Q "The general story" being the Gerth story?

12 A Correct.

13 Q I want to skip to the next sentence, skip  
14 one sentence, the sentence stating "Rick Massey, not  
15 Hillary Clinton, was the Rose Law Firm lawyer who met  
16 with state regulators to discuss procedures to  
17 improve the S&L's financial reserves," and it goes  
18 on.

19 Was it in connection with the preparation  
20 of this sentence that you talked to Mr. Hubbell about  
21 the Rose Law Firm's billing records to Madison?

22 A I believe I talked with Beverly Bassett

1 Schaffer about that sentence.

2 Q Okay.

3 A And other -- and my review of the  
4 Securities Department file.

5 Q But you did talk to Mr. Hubbell about the  
6 Rose Law Firm's billings to Madison; correct?

7 A About Rose Law Firm's billings to Madison?

8 Q Yes.

9 A I talked to him much more generally about  
10 who did the work on this case.

11 Q Okay. Did his answers -- did his  
12 statements to you indicate that he had reviewed the  
13 firm's billing records to Madison Guaranty?

14 A I don't recall what the source of his  
15 information was. I know he told me he had talked to  
16 Rick.

17 Q Did he tell you he had reviewed the firm's  
18 billing records?

19 A At some point he told me that. I don't  
20 know chronologically if it was before or after this  
21 statement was issued.

22 Q Okay. Did you talk to Ms. Thomases about

1 the -- who did the work at Madison -- I mean, at the  
2 Rose Law Firm for Madison?

3 A Yes.

4 Q Do you know what her source of information  
5 was?

6 A I don't know her source of information.

7 Q Okay. Do you know whether she talked to  
8 Hillary Clinton about the matter?

9 A About what matter?

10 Q About who did the work at Rose Law Firm for  
11 Madison.

12 A I don't know who she talked to. I know  
13 Susan spoke with authority and I did not question  
14 her.

15 Q And by "authority," whose authority do you  
16 mean?

17 A That's an adjective.

18 Q With authority meaning with -- just with  
19 emphasis or with authority; I'm sorry, it speaks for  
20 itself.

21 I told you I am new to this language.

22 MR. KEKER: Viet, how much longer do you

---

110

1 think we have to go? We sort of planned on two hours  
2 and we are a half-hour beyond that.

3 MR. DINH: I think I am looking at another  
4 half-hour on my part, John.

5 MR. KEKER: Well, I will not ask too many  
6 questions.

7 MR. DINH: We will go off the record for a  
8 break for the reporter. Five minutes.

9 (Recess.)

10 MR. DINH: Back on the record.

11 BY MR. DINH:

12 Q Did you talk -- did Ms. Thomases tell you  
13 at any time that she had talked to Mrs. Clinton about  
14 who retained the Rose Law Firm to represent Madison,  
15 and who did the work for Madison?

16 A Ms. Thomases told me many times that she  
17 talked with Mrs. Clinton. She did not delineate what  
18 she talked with her about specifically.

19 Q Okay. Did Ms. Thomases tell you that her  
20 understanding was that Massey brought in the --  
21 brought in Madison as a client, and it was he, Rick  
22 Massey, who did most of the work for Madison?

1 A Yes, in substance. I don't know if those  
2 were her exact words.

3 Q Right. Did Ms. Thomases tell you that she  
4 had reviewed the Rose Law Firm's billing records to  
5 Madison?

6 A No.

7 Q Did she make any specific statements  
8 regarding the billings of Madison -- of the Rose Law  
9 Firm to Madison?

10 A We discussed that we should talk with  
11 members of the Rose Firm about whether they had  
12 records.

13 Q And did you talk with -- and is that what  
14 led you to talk to Webster Hubbell?

15 A Yes.

16 Q Did you talk to anybody else at the Rose  
17 Law Firm regarding the billing records?

18 A I don't know if I spoke with anyone else  
19 regarding the billing records. I spoke with many  
20 folks from the Rose Law Firm.

21 Q But you definitely talked with Web Hubbell  
22 about them?

1 A Yes.

2 Q Did Ms. Thomases talk with Web Hubbell  
3 about the Rose Law Firm billing records that you know  
4 of?

5 A I know that now from her prior testimony.

6 Q But she did not tell you in 1992 that she  
7 had talked with Web Hubbell and this is what he said?

8 A She did not, is my recollection.

9 Q Did she tell you that she had talked to  
10 anybody else at the Rose Law Firm regarding their  
11 billing records to Madison?

12 A I knew that Web had discussed whether they  
13 had billing records with Vince Foster. I don't know  
14 if I knew that from Web or from Susan.

15 Q But you knew that in 1992?

16 A Yes.

17 Q But in any event, at some point, you found  
18 out that they did have billing records, and at some  
19 point, Mr. Hubbell told you that he had reviewed  
20 those records; correct?

21 A At some point, he told me he had reviewed  
22 records. I don't know specifically what those



1 records were.

2 Q Okay. Records of billings?

3 A That's what I don't know specifically.

4 Q Records meaning records indicating how much  
5 work they have done?

6 A I believe he said the files --

7 Q The files?

8 A -- so I don't know. There are a lot of  
9 different kinds of files in a law firm, and I don't  
10 know what he was referring to.

11 Q And you did not ask specifically about the  
12 billing records?

13 A I did ask him specifically about the  
14 billing records. Well, the billing records -- I  
15 asked him whether he had reviewed the files to  
16 determine who did the work. What I was asking him  
17 about was who did the work, that I could know, you  
18 know, who if anyone met with Securities Commission  
19 staff, things like that.

20 Q And he said he had reviewed the files and  
21 they indicated Rick Massey was the one who primarily  
22 did the work?

1 A Yes.

2 Q He didn't state he specifically reviewed  
3 the firm's billing records on Madison?

4 A We discussed time records. He put time  
5 into it, but that was related to generally who did  
6 the work.

7 Q Okay. And you do not -- let me understand  
8 your testimony. You do not know whether these time  
9 records reflected or indicated actual time sheets or  
10 billings, or any such specific records?

11 A In 1992, I did not know that.

12 Q Okay. Let me direct your attention now to  
13 a document Bates stamped LML 125.

14 A Will you tell me what it is?

15 Q It is a memorandum from Loretta Lynch and  
16 Diane Blair to Wilhelm/Lindsey, re: questions to be  
17 answered.

18 A Are we done with this?

19 Q Yes.

20 A Okay.

21 Q And just for the record, I will read the  
22 first two sentences of that memorandum. "There are

1 priority questions which we have exhausted other  
2 avenues of inquiry on. Despite considerable effort  
3 by the defense team and exhaustive review of  
4 documents available to us, questions remain that  
5 simply must be answered by Hillary and Bill  
6 themselves."

7 And the first question is, "did Bill  
8 Clinton solicit a retainer agreement for the Rose Law  
9 Firm from Jim McDougal? If so, when did that happen  
10 and what were its terms? Who, other than Jim and  
11 Susan, were privy to that discussion?"

12 Am I correct in reading this document, that  
13 as of March 18, 1992, you considered whether -- the  
14 question whether Bill Clinton solicited a retainer  
15 agreement for Rose Law Firm from Jim McDougal to be  
16 an open question?

17 A Is this a March 18 or March 13 document? I  
18 can't tell.

19 Q I read mine to be March 18.

20 MR. KRAVITZ: That's what it looks like to  
21 me. My copy is hard to read, but it looks more like  
22 March 18 than March 13.

1 BY MR. DINH:

2 Q We can review the original on that, but let  
3 me just ask you the question leaving aside the date.

4 As of the date that you prepared this  
5 document, did you consider that -- the question of  
6 whether Bill Clinton solicited a retainer agreement  
7 for the Rose Law Firm from Jim McDougal to be an open  
8 question?

9 A I don't have an independent recollection in  
10 terms of this period of time, other than this  
11 document. I asked the question during this period of  
12 time.

13 Q So the question was asked in the period of  
14 time?

15 A I don't recall specifically what I  
16 considered to be open-and-shut questions at various  
17 points along the way.

18 MR. KEKER: And if by open question that  
19 implies that she was rejecting information to the  
20 contrary, I object to that as argumentative. I mean,  
21 she was doing what she was doing, writing this memo.  
22 You can imagine a million situations where you might

1 have some information, but you wanted to confirm it  
2 or you had some information you wanted to check  
3 whether the contrary could be true, whatever.

4 MR. DINH: Your objection is noted for the  
5 record.

6 BY MR. DINH:

7 Q By "open question" -- let me put the  
8 question this way.

9 By drafting this memo, by drafting this  
10 memo, is it your -- and stating that "questions  
11 remain that simply must be answered by Hillary and  
12 Bill themselves," is this one of the questions you  
13 intended to be asked, one that "must be answered by  
14 Hillary and Bill themselves"?

15 A It was a question I didn't have other  
16 documentation to answer.

17 Q Okay. Did you send this memorandum to  
18 Wilhelm and Lindsey?

19 A I did.

20 Q And did you get a response?

21 A I don't remember.

22 Q Let me direct your attention to DKSN

1 28152.

2 A I am all out of order here so could you  
3 tell me --

4 Q Okay, this is a memorandum, press -- from  
5 Loretta Lynch "to BC, HRC, Lindsey and Lyons, 3/18/92  
6 from Loretta Lynch, press inquiries/stories in the  
7 making." And on number one there, "Washington Times  
8 Jerry Siebert"?

9 A Yes.

10 Q Let me just read the paragraph for the  
11 record. "He has contacted the campaign for a  
12 response to the story that BC requested that McD  
13 retain the Rose Law Firm/HRC and the timing and  
14 specifics of that retainer. At various times I have  
15 spoken with Web Hubbell about this retainer issue  
16 over the last three weeks, in part to solve the how  
17 did the Madison Guaranty business come in question.  
18 And in part to determine if McD's allegations that he  
19 put HRC on retainer was in fact accurate."

20 Is this the question -- is this the inquiry  
21 which you were referring to in LML 125, as a question  
22 that simply must be answered by Hillary and Bill

1 themselves?

2 A I don't know. I don't know if these  
3 questions in document 125 related to press questions  
4 or generally, as you say, open questions.

5 Q Investigative questions for your own  
6 purposes you mean?

7 A Right, I don't know.

8 Q Okay. And you stated you don't recall  
9 whether you received an answer to these questions?

10 A To the questions of 125 that I faxed to  
11 Wilhelm and Lindsey, no, I don't recall.

12 Q Let me ask you, DKSJ 28152, did you send  
13 this to BC, HRC, Lindsey and Lyons?

14 A I sent it to Lindsey and Lyons. And  
15 Lindsey for distribution. There was a campaign going  
16 on so these folks weren't in Arkansas. This is the  
17 day after the Illinois primary and they were  
18 someplace else.

19 Q "Lindsey for distribution," meaning that  
20 Lindsey would be -- with the understanding Lindsey  
21 would send it on to BC and HRC?

22 A With the hope.

---

120

1 Q Okay. Let me direct your attention now to  
2 LML 189.

3 A You want to tell me what that is?

4 Q Yes. It is 3/24/92, "posed questions yet  
5 unanswered after the WWDC release"?

6 A Is that attached to something?

7 Q I did not think so.

8 A Oh, okay. My copy was attach to 125.

9 Q I'm sorry?

10 A Okay.

11 Q Let me ask you, did you prepare this  
12 document, do you recall?

13 A Yes.

14 Q Yes?

15 A Yes.

16 Q And what did this -- why did you prepare  
17 this document?

18 A Because The Washington Post had asked  
19 questions.

20 Q And from what source did you get the  
21 information that was contained in this document?

22 A From my general knowledge and the sources I



1 had compiled previously.

2 Q Let me direct your attention to the answer  
3 to question number 3 there, on LML 189, the first  
4 question on the page, "HRC had no substantive  
5 involvement in the representation of Madison Guaranty  
6 before the State Securities Commission. In fact, as  
7 all parties involved have stated, and as the  
8 Securities Department records show, Rick Massey was  
9 the Rose Law Firm lawyer who met with Securities  
10 Department staff regarding the preferred stock  
11 issuance, and subsidiary broker/dealer application  
12 before the Department. By this time McDougal was no  
13 longer an officer of the S&L. He was only on the  
14 board. Rick Massey solicited this particular  
15 business from John Latham, Madison Guaranty's CEO and  
16 a college friend of Massey's."

17 Did you talk to Mrs. Clinton about this,  
18 the retention of the Rose Law Firm by Madison Savings  
19 & Loan, before you prepared this document?

20 A I believe, as the answer shows, that it was  
21 I talked to other folks and reviewed the Arkansas  
22 Securities Department file.

1 Q Did you talk to HRC in addition to talking  
2 to other folks and a review of the Arkansas  
3 Securities file?

4 A I don't remember doing so.

5 Q By "other folks," do you mean Web Hubbell  
6 and Susan Thomases?

7 A And Beverly Bassett Schaffer --

8 Q Okay.

9 A -- and other people in the Securities  
10 Department.

11 Q Did you talk to Rick Massey?

12 A As I said, I don't remember if I talked to  
13 Rick Massey, or if Susan or Web talked to Rick Massey  
14 and told me what he said. I knew what his answer  
15 was, but I don't recall if I specifically talked to  
16 him about it.

17 Q Okay.

18 A I believe by this time Rick Massey had  
19 talked to the press --

20 Q Okay. I am sorry.

21 A I believe by this time Rick Massey had  
22 talked to the press so there were public statements.

1 Q Let me -- and you said you don't recall  
2 discussing this with Hillary before drafting this  
3 answer; correct?

4 A Correct.

5 Q Let me direct your attention to LML 192 and  
6 LML 193. 12 is a Bill Clinton for President fax  
7 cover sheet, and 193 is a memorandum from Loretta  
8 Lynch to Eli, E-l-i, Segal, S-e-g-a-l, Betsey Wright  
9 and HRC, dated 3/24/92, "repose questions yet  
10 unanswered after the Whitewater" -- "after the WWDC  
11 release."

12 Did you prepare this document?

13 A Yes.

14 Q And question number three there, and the  
15 answer, I will represent to you, is substantively the  
16 same as the -- as that from LML 189. And the fax  
17 cover sheet shows that the -- that is on LML 192 to  
18 Hillary, fax number, and from Loretta Lynch, number  
19 of pages, four including cover sheet, with a  
20 handwritten note "for your review; for what it's  
21 worth, I was informed this early afternoon that we  
22 would be responding this, p.m."

1 Did you indeed fax this to Mrs. Clinton?

2 A I faxed it to the governor's mansion.

3 Q To the governor's mansion, okay.

4 Was that where Mrs. Clinton was staying at  
5 the time?

6 A That's where she lived. I don't recall on  
7 that particular day if that's where she was.

8 Q Did she review the document?

9 A I'm sorry?

10 Q Did she review the document?

11 A I don't know.

12 Q Did you have a subsequent discussion with  
13 her about the document --

14 A No.

15 Q -- either before or after you released the  
16 document?

17 MR. KEKER: Well, "you released." She  
18 didn't release the document.

19 MR. DINH: I'm sorry, okay.

20 BY MR. DINH:

21 Q Did you have any subsequent discussions  
22 with Mrs. Clinton at any time regarding this

1 document?

2 A I don't recall if, "at any time." I did  
3 not have a conversation with her around that time,  
4 about this document, after release.

5 MR. DINH: Off the record.

6 (Discussion off the record.)

7 MR. DINH: On the record.

8 BY MR. DINH:

9 Q Let me direct your attention now to a  
10 document Bates stamped ST 0000023. And these are the  
11 handwritten notes of Susan Thomases --

12 A Okay.

13 Q -- that I previously sent to you.

14 And on the top of ST 000002, the notation  
15 is "2/20 T.C. McFadden and Loretta Lynch." And that  
16 continues over to ST 023, and let me represent to you  
17 that we asked Ms. Thomases about her notes this  
18 morning, and specifically regarding this particular  
19 page. And she said that this was part of her  
20 conversation with you, relating these matters.

21 Do you recall this conversation with  
22 Ms. McFadden and Ms. Thomases?

1 A I don't recall having a conversation with  
2 Nancy McFadden on this issue with Susan.

3 Q But you said you did talk with Susan  
4 Thomases from time to time regarding these matters;  
5 correct?

6 A Yes.

7 Q Do you recall the conversation occurring  
8 two days after the New Hampshire primary?

9 A I'm sure I talked with Susan that week. I  
10 don't know the particular day.

11 Q Okay. Let me direct your attention to --  
12 actually, let me just back up a little bit. When you  
13 talked to Susan Thomases, are you reporting  
14 information, or are you trying to gather information?

15 A Both.

16 Q It is an information exchange?

17 A Depending on the conversation.

18 Q Sometimes she would tell you what she knew,  
19 and sometimes you would tell her what you knew?

20 A And sometimes both.

21 Q Let me direct your attention to the -- just  
22 below the middle of the page on ST 23, the notation

1 there being "1981." Can you see that?

2 A Yes.

3 Q Let me read it for you. "Madison Bank &  
4 Trust make the loan to HC or Corp., with BC and HC as  
5 guarantors." And then "1982," the entry immediately  
6 after that, "Rose Law repres." which Ms. Thomases  
7 testified she thought was "represent McDougal and he  
8 paid."

9 Do you recall conveying this information to  
10 Ms. Thomases?

11 A I recall discussing with Susan generally a  
12 chronology of what happened.

13 Q Do you recall -- first of all, do you  
14 recall, in 1982, that you knew that the Rose Law Firm  
15 had represented McDougal and he had paid in 1982?

16 A I recall knowing that, at some point in the  
17 early '80s -- and I think, you know, there are  
18 chronologies out there -- just generally, that the  
19 Rose Firm represented McDougal on a matter that was  
20 not related to the subsequent matters.

21 Q And my particular emphasis is on the "he  
22 paid," "and he paid." Do you recall any question at

1 that time whether or not he had paid his bill? And  
2 by "at that time," I meant in the 1992 campaign.

3 A I recall general questions about whether  
4 McDougal had paid billings. I don't recall  
5 specifically as to which representations or years.

6 Q The indication here is plus he paid. Does  
7 that indicate to you that, at least by this  
8 conversation, you had information that he had paid?

9 MR. KEKER: He had paid in full or paid  
10 some money?

11 MR. DINH: It just says "paid."

12 THE WITNESS: These aren't my notes and I  
13 don't know what they mean.

14 BY MR. DINH:

15 Q Do you recall, as of February 20th, having  
16 an understanding that McDougal had paid?

17 A Had paid what?

18 Q I presume the bill for the Rose Law  
19 representation of him.

20 MR. KEKER: Why don't you ask her, without  
21 respect to the notes, what she knew about whether or  
22 not McDougal had paid.



1 MR. DINH: That's exactly what I am asking.

2 MR. KEKER: Then forget about the notes.

3 The question is -- Mr. Dinh, as I understand it --  
4 what did Ms. Lynch know while she worked at the  
5 campaign about whether or not McDougal had paid  
6 earlier --

7 BY MR. DINH:

8 Q No. Let me phrase the question. As of  
9 February 20, 1992, did you know that Mr. McDougal had  
10 paid his bill to the Rose Law Firm for its earlier  
11 representation of Mr. McDougal?

12 A I don't know what I knew as of February  
13 20th. I don't remember.

14 Q Do you recall saying that -- saying -- I  
15 take it that means you don't recall saying this to  
16 Mrs. Thomases?

17 MR. KEKER: Saying what?

18 MR. DINH: Saying Mr. McDougal had paid the  
19 Rose Law Firm for its representation of Madison -- of  
20 him in an unrelated matter.

21 THE WITNESS: I don't recall.

22 BY MR. DINH:

1 Q Let me direct your attention ST 50 Rose  
2 37.

3 A Is that another document?

4 Q It is another -- it is from the set of  
5 notes of Ms. Thomases.

6 MR. KEKER: 50?

7 BY MR. DINH:

8 Q No, ST 0000037.

9 A Okay.

10 Q Towards the bottom of the written page  
11 there, it says "March 2, Loretta, \$9000, Gerth  
12 meeting."

13 Do you know what that refers to?

14 A I know that Susan was setting a meeting  
15 with Gerth for the three of us to discuss the  
16 Whitewater issue and for him to ask questions.

17 Q Okay. And did you, in fact, have that  
18 meeting with Mr. Gerth?

19 A We had a meeting with Mr. Gerth.

20 Q Okay. Do you recall the date of that  
21 meeting?

22 A It was March 5th and March 6th.

1 Q Was that in -- was this in New York?

2 A Yes.

3 Q That was in Ms. Thomases's office?

4 A Yes.

5 Q Both meetings?

6 A Yes.

7 Q Was one a continuation of the other, or did  
8 Mr. Gerth call up after the first meeting and request  
9 an additional one?

10 A It was a continuation, the Friday meeting  
11 was a continuation of Thursday meeting.

12 Q Okay. Let me direct your attention then to  
13 ST 39.

14 A Is that something not in this set of  
15 documents?

16 Q You know what, it is one of the documents I  
17 faxed to you today.

18 A Okay. Yes. I haven't had a chance to look  
19 at this.

20 Q Why don't you go ahead and take a look at  
21 it.

22 MR. KEKER: Viet, this is a lot of writing

---

1 that's not hers. What are we --

2 MR. DINH: Why don't I direct your specific  
3 attention.

4 MR. KEKER: I assume it is Mrs. Thomases's  
5 notes.

6 MR. DINH: They are her notes. Toward the  
7 bottom of the page there where it says "Bill Kennedy  
8 and Carolyn Huber cooperation issue."

9 THE WITNESS: Yes.

10 BY MR. DINH:

11 Q Do you know what Ms. Thomases is referring  
12 to, when she says "Bill Kennedy and Carolyn Huber  
13 cooperation issue"?

14 A No.

15 Q Were there questions during the campaign  
16 regarding your -- actually, did you get the  
17 cooperation from the Rose Law Firm in getting its  
18 files, as expeditiously as you wanted?

19 A In getting what files?

20 Q Whatever files or information you needed  
21 from the Rose Law Firm.

22 A I never received Rose Law Firm files from

1 them.

2 Q Okay.

3 A I received materials.

4 Q You received materials from the Rose Law  
5 Firm?

6 A Well, the campaign receipts I made sure  
7 related to Whitewater.

8 Q That was from the Rose Law Firm?

9 A That were kept at the Rose Law Firm.

10 Q You received it from the Rose Law Firm and  
11 it presumably was kept at the Rose Law Firm before it  
12 was transferred over to the campaign. Did you have  
13 any problems getting those files, those materials?

14 A Any problems?

15 Q Did you encounter any difficulties in  
16 getting those materials?

17 A I think they -- did I have any  
18 difficulties? I think they wanted to keep them at  
19 the Rose Firm, and at some point, I wanted to keep  
20 them at the campaign, but that wasn't difficulties.

21 Q Okay. Who did you deal with in trying to  
22 gather these documents?

1 A What documents?

2 Q The materials that you -- relating to  
3 Whitewater that you received from the Rose Law Firm.

4 A I spoke with Bill Kennedy, and with Carolyn  
5 Huber, and with Web Hubbell.

6 Q Okay. Was there a "cooperation issue" with  
7 respect to Bill Kennedy and Carolyn Huber, with  
8 respect to the materials you were trying to, or you  
9 were getting from the Rose Law Firm?

10 A I didn't think so.

11 Q Okay. Do you recall Ms. Thomases telling  
12 Mr. Gerth during the meeting you had testified to, on  
13 March 4 and 5, regarding any difficulty or problems  
14 or cooperation issues, that you had had in trying to  
15 get materials from the Rose Law Firm?

16 A That I had had?

17 Q Yes, or that you may have had.

18 A I know -- now you are talking about during  
19 our meetings?

20 Q Yes.

21 A I know we told Mr. Gerth that we had had  
22 difficulties finding documents from -- just

1 generally. And that we didn't think that the  
2 documents that the Rose Firm had were by any means  
3 complete.

4 Q Okay. Did you make specific references to  
5 whether the Rose Law Firm had turned over all of its  
6 materials that it had in its possession relating to  
7 Whitewater?

8 A I did not.

9 Q Do you recall Ms. Thomases stating that to  
10 Mr. Gerth?

11 A I know she said we needed to get some  
12 additional documents from the Rose Firm but I believe  
13 that that was because Mr. Gerth was asking additional  
14 questions that we had not considered.

15 Q Okay. But did you or Ms. Thomases tell  
16 Mr. Gerth that you were having difficulty receiving  
17 -- getting files from the Rose Law Firm?

18 A I didn't and I don't recall what Susan  
19 said.

20 Q Okay. Did you or Ms. Thomases tell  
21 Mr. Gerth that you were having difficulty receiving  
22 files from Mr. Kennedy at the Rose Law Firm, or

1 getting materials from Mr. Kennedy at the Rose Law  
2 Firm?

3 A The only issues I had with Mr. Kennedy were  
4 was he in town when I was in town so I could come to  
5 the firm to look at documents.

6 Q Right.

7 A Scheduling questions.

8 Q I am asking whether you or Ms. Thomases  
9 told Mr. Gerth that you had difficulty getting files  
10 and materials from Mr. Kennedy at the Rose Law Firm?

11 A Well, I just said I didn't and I don't  
12 remember what Susan said about the Rose Law Firm, and  
13 that the Rose Law Firm is the people in the Rose Law  
14 Firm.

15 Q And that includes any specific reference to  
16 Mr. Kennedy?

17 A I don't remember a specific reference to  
18 Mr. Kennedy. I don't remember. I remember  
19 discussions generically of -- that we had problems  
20 finding and compiling documents.

21 Q Okay. But you don't remember either you or  
22 Ms. Thomases, raising something in the nature of a



1 complaint, regarding receiving documents from the  
2 Rose Law Firm, to Mr. Gerth?

3 A I don't remember. I remember -- what I  
4 remember is phrasing the question of we don't have  
5 all the documents and we are going to have to go  
6 looking for them.

7 Q Let me direct your attention -- we are done  
8 with those documents, by the way.

9 Let me direct your attention to LML 353,  
10 354, and 355.

11 A Okay. And those look like?

12 Q Those are E-mails.

13 A 35?

14 Q 353, 354 and 355.

15 A Okay. Yes.

16 Q Let me just work this through here.

17 353 is an E-mail from John to Loretta,  
18 dated Wednesday, May 19, 1992, at 3:25 p.m., and the  
19 message is, "truly amazing," with an attachment.

20 354 is a message from Betsey to John,  
21 "subject re: To Joly," and the message reads "give  
22 me an example, please; I will remind you again that

1 Hillary asked me to have no inquiries about their  
2 personal finances to anybody," in caps, "without my  
3 personal decision that it was appropriate to do so  
4 without talking to her first; I am unaware of  
5 whatever kinds of things you are checking with Joly,"  
6 J-o-l-y -- "I only asked if Joly" -- "I only asked  
7 Joly" -- and looks like it is cut off but there is an  
8 F there, "help on net worth this morning; no other."  
9 And that's the end of 354.

10 I am going on to 355, "no other topic  
11 should have been discussed with her, except on my  
12 specific direction to do so. I do not think that  
13 Hillary's request to me and my pledge to her is  
14 unreasonable. I am asking again for your strict  
15 cooperation in fulfilling this pledge to Hillary."

16 Do you know who John is?

17 A Yes.

18 Q Who is that?

19 A John Foster.

20 Q Someone who worked with you at the  
21 campaign?

22 A Yes.

- 1 Q And Betsey is Betsey Wright?  
2 A Yes.  
3 Q Joly is Joly Redden?  
4 A Yes.  
5 Q Do you know her to be the Clintons'  
6 accountant?  
7 A I don't know if she still is. She was at  
8 the time.  
9 Q She was in 1992?  
10 A Yes.  
11 Q Do you remember getting this message from  
12 Mr. Foster?  
13 A Yes.  
14 Q Do you remember reading the accompanying  
15 message from Ms. Wright to Mr. Foster?  
16 A Yes.  
17 Q What were the circumstances that led to  
18 these messages?  
19 A I know the circumstances that led to the  
20 message to me, but I don't know the circumstances  
21 that led to the message.  
22 Q The underlying message from Ms. Wright to

- 1 Mr. Foster?  
2 A Right.  
3 Q Can you tell me the circumstances that led  
4 to the message to you?  
5 A Yes. John forwarded the message to me so  
6 that I could see Betsey's response to him.  
7 Q Do you know what message he sent to  
8 Ms. Wright, to which Ms. Wright was responding to?  
9 A It says "re: to Joly," so it was something  
10 about Joly Redden.  
11 MR. KEKER: Are you doing anything more  
12 than interpreting the message? Do you have  
13 independent knowledge?  
14 THE WITNESS: I know he was working on  
15 issues at the time regarding information he would  
16 have to get from Joly.  
17 BY MR. DINH:  
18 Q Did you have a conversation with Mr. Foster  
19 about these messages, independent of these E-mails?  
20 A No.  
21 Q Did he tell you -- did he tell you that he  
22 had sent a message to Ms. Wright, and this is the

1 response that he got?

2 A No, we didn't have a conversation about  
3 this.

4 Q Okay. You didn't discuss it with him  
5 afterwards?

6 A No.

7 Q Okay. Did you talk to Ms. Wright  
8 afterwards, after you read this message?

9 A I am certain I talked with Betsey Wright  
10 afterwards.

11 Q What did you say to Ms. Wright?

12 A I don't believe I discussed this with her.

13 Q Oh, really? You did not talk about this  
14 with her?

15 A I don't believe so.

16 Q And you don't know what the inquiry was  
17 that Mr. Foster sent to Ms. Wright that prompted this  
18 response?

19 A No. I know that he was working on issues  
20 regarding the personal finances, but I don't recall  
21 specifically -- I didn't read his initial E-mail.

22 Q And just so I get it clear you did, though,

1 discuss with Mr. Foster, either before he received  
2 the response or after he received the response  
3 regarding his message to Ms. Wright, or Ms. Wright's  
4 response to him, which he forwarded to you?

5 A We primarily communicated by E-mail.

6 Q Okay. Did you recall sending a message  
7 back to Mr. Foster regarding this E-mail?

8 A No.

9 Q Did you discuss Ms. Betsey Wright's  
10 response with anyone else other than Ms. Wright and  
11 Mr. Foster?

12 A I believe I generically discussed it with  
13 Diane Blair.

14 Q What did you say to Ms. Blair?

15 A I thought in general that Betsey was being  
16 unreasonable.

17 Q With respect to her response?

18 A With respect to her general conduct.

19 Q Okay. And by "unreasonable," what do you  
20 mean?

21 A Meaning she was controlling information  
22 flow unreasonably.

1 Q Information flow to you?

2 A To everyone working on defense issues.

3 Q Everyone working on defense issues within  
4 the campaign?

5 A Correct.

6 Q Correct. Do you think she was withholding  
7 information from you?

8 A I have no idea.

9 Q Did you have that impression at the time?

10 A This wasn't my issue. It wasn't a question  
11 of withholding.

12 Q Okay, did you have an impression at the  
13 time as to other issues that Ms. Wright was  
14 withholding information from you, with respect to the  
15 issues that you were working on?

16 A Did I have an impression?

17 Q Yes. I mean, did you -- did you feel at  
18 the time, did you feel at the time that Ms. Wright  
19 was withholding information from you relating to the  
20 issues you were working on?

21 A I have no idea what I felt at the time.

22 Q Okay. My question was simply directed to

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1 your earlier testimony, that you thought that she was  
2 acting unreasonably in controlling the information  
3 flow. And I was simply trying to understand what  
4 exactly you meant by that.

5 A In light of this E-mail, that's what I'm  
6 generically recalling.

7 Q Okay. Do you recall what Ms. Blair's  
8 response to you was?

9 A No, I don't. I think -- no, I don't.

10 Q Did you talk with anybody else besides  
11 Ms. Blair?

12 A I don't recall.

13 Q Did you talk to anybody else besides --  
14 anybody else actually, regarding what you perceived  
15 to be Ms. Wright's unreasonable control of the flow  
16 of the information?

17 MR. KEKER: She said that she was talking  
18 about this one instance, this E-mail was  
19 unreasonable. You are trying to expand it into  
20 something that she didn't say.

21 BY MR. DINH:

22 Q Well, I think the record speaks for itself



1 but I will ask a different question now.

2 Did you talk to anybody else regarding  
3 Ms. Wright's efforts to control the information, to  
4 anybody?

5 MR. KRAVITZ: You mean other than to  
6 Ms. Blair?

7 MR. DINH: We are not talking about this  
8 specific E-mail anymore.

9 THE WITNESS: I don't really recall who I  
10 discussed Betsey with.

11 BY MR. DINH:

12 Q Do you recall discussing with anybody, not  
13 anybody specific, but do you recall having  
14 discussions about Ms. Wright's efforts to control  
15 information?

16 A I recall generally complaining about  
17 Betsey, but I don't recall the specifics of my  
18 complaint, other than that I complained about her.

19 Q Was there anybody else you had complaints  
20 about with respect to the information flow?

21 MR. KRAVITZ: Viet, I'm going to have to  
22 object. I have been sitting here now for almost

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1 3-1/2 hours and I haven't objected once, but I really  
2 don't see what the relevance is to any of these  
3 questions, about whether she complained or discussed  
4 about Betsey Wright's control of information flow,  
5 back in 1992, not being pointed at specific issues.

6 MR. DINH: We know that she was working on  
7 Whitewater and Madison issues at the time. And so if  
8 it's --

9 THE WITNESS: That's not true. At this  
10 time I don't recall working on Whitewater matters.

11 MR. KEKER: Yes, this is -- I think this  
12 answer to a specific E-mail has been misused.  
13 Objection.

14 I have been sitting 3-1/2 hours now. If  
15 you have a question, ask it. This was supposed to be  
16 a two-hour deposition.

17 MR. DINH: But I think the record will  
18 speak for itself. We all have been sitting here for  
19 3-1/2 hours.

20 MR. KEKER: If there is a question, why  
21 don't you ask it.

22 BY MR. DINH:

1 Q Did you -- never mind, scratch that.

2 You indicated earlier that you left the  
3 campaign in the middle of June, 1992?

4 A Yes.

5 Q I am going to read you -- by the way, did  
6 you have conversations with James Stewart, in  
7 preparation for his book, "Blood Sport," which came  
8 out this year?

9 MR. KEKER: The name is not Dave.

10 BY MR. DINH:

11 Q James Stewart?

12 MR. KEKER: Dave Stewart is a wonderful  
13 pitcher for the -- used to be for the Oakland As.

14 BY MR. DINH:

15 Q I did say James Stewart, but somewhere  
16 between my vocal chord and the transmission, it came  
17 out as Dave, but it is James Stewart, J-a-m-e-s.

18 Did you talk with James Stewart in  
19 connection with "Blood Sport"?

20 A No.

21 Q Let me just read you -- and I wanted to  
22 just ask you a question and give you an opportunity

1 to make comments to this -- page 220 of his book, "as  
2 she later explained in connection with your leaving  
3 the campaign 'I did not want to remain responsible  
4 for keeping a lid on the issues that were on my  
5 plate, including Whitewater. I did not believe I  
6 could keep a lid on it.'"

7 Do you recall making this statement to  
8 anyone?

9 A No.

10 MR. KRAVITZ: What page was that?

11 MR. DINH: 220.

12 BY MR. DINH:

13 Q You dispute Mr. Stewart's account that I  
14 have just read to you?

15 A I did not speak with James Stewart.

16 Q Did you speak with anyone else, and make  
17 this statement or a statement substantially the same  
18 to this effect?

19 A "Substantially the same to this effect," I  
20 do not -- I didn't say that.

21 Q Okay. Did you not say, you did not want to  
22 remain responsible for keeping a lid on, or not

1 letting the facts out, about issues that you were  
2 working on including Whitewater?

3 A I don't know where he got that.

4 Q I don't either; that's why I am asking  
5 you.

6 A I didn't talk to him. He quotes me. I  
7 don't know how a responsible journalist can do that.

8 Q Do you recall talking to anyone regarding  
9 the circumstances, that you left and complained that  
10 part of the reason why you left was because of  
11 Whitewater?

12 A I recall wanting to come home. And that's  
13 what I did.

14 Q This is in 1992, in mid-June?

15 A That's correct. I had lived in Little  
16 Rock, Arkansas for six months.

17 Q Unfortunately, I have never had the  
18 pleasure of being in Little Rock.

19 Do you recall, that is your recollection  
20 with respect to the circumstances why you left Little  
21 Rock? Do you recall having conversations with or  
22 giving interviews regarding the circumstances of your

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1 leaving and stating that it related to Whitewater?

2 A I didn't give any interviews.

3 Q And so just to ask my earlier question, you  
4 dispute that statement -- that account in  
5 Mr. Stewart's book that I read to you earlier?

6 A Yes.

7 Q After you left the campaign, after the  
8 President was elected, did there come occasion where  
9 you contacted Mr. Hubbell in Washington, D.C.?

10 A Yes.

11 Q Was this -- did you talk about Whitewater,  
12 Madison, David Hale, or any of the related matters?

13 A What other related matters?

14 Q David Hale, Perry County Bank, any issue  
15 that you were working on during the campaign?

16 A I worked on many issues that were outside  
17 the scope of Senate Resolution 120. I did not --

18 MR. KEKER: Why don't you ask her if she --  
19 what specific things did they discuss -- you started  
20 to make a list -- and get her answer to that. Did  
21 they discuss Whitewater, David Hale, Madison  
22 Guaranty, Whitewater.

1 BY MR. DINH:

2 Q Okay. How many times did you call

3 Mr. Hubbell, just approximately, do you recall?

4 A I don't recall.

5 Q Okay. And did the reason for you calling

6 Mr. Hubbell relate to your work in the campaign?

7 A No.

8 Q Did you have occasion to contact

9 Mr. Vincent Foster after he came to Washington?

10 A Yes.

11 Q Did the reasons that you contacted him

12 relate to the issues that you were working on during  
13 the campaign?

14 A No.

15 Q Did he ever talk to you regarding issues

16 that you were working on during the campaign?

17 A I mean, once he was in Washington?

18 Q Once he was in Washington.

19 A No.

20 Q Let me ask that same question with regard

21 to Mr. Hubbell. Did he ever talk to you regarding  
22 issues that you were working on during the campaign?

---

1 A No.

2 Q Incidentally, when was the last time you  
3 talked to Mr. Foster?

4 A I believe during the summer of 1993.

5 Q Do you recall when approximately?

6 A It was in June or early July.

7 Q And you know that Mr. Foster passed away on  
8 July 20, 1993; correct?

9 A I know he passed away late July. I don't  
10 know the exact date.

11 Q Did your conversation with Mr. Foster give  
12 you any indication as to the reason why he may have  
13 taken his life?

14 A No.

15 MR. DINH: Take a quick break for the  
16 reporter to change tapes here.

17 (Discussion off the record.)

18 BY MR. DINH:

19 Q Let me direct my final question to LML 312  
20 which is an E-mail dated 4/21/92.

21 MR. KEKER: Just one second.

22 THE WITNESS: 312?



1 MR. DINH: Yes.  
2 MR. KEKER: LML.  
3 THE WITNESS: Yes.  
4 MR. KEKER: I am not sure we can find it  
5 unless it is cut off or something.  
6 MR. DINH: It should be where all the  
7 E-mails I sent to you yesterday were. It may have  
8 been attach to another E-mail. It may be at the end  
9 of another E-mail, may have been paper clipped to  
10 another document. If my record keeping is correct,  
11 it should be before DKSJN 28083, which I think I also  
12 sent you.  
13 THE WITNESS: It might be attached -- got  
14 it.  
15 BY MR. DINH:  
16 Q Do you have it?  
17 A Yes.  
18 Q Take a moment to look at it and take a look  
19 at the second one, the one on the bottom of the page,  
20 the reply mail.  
21 A Okay.  
22 Q For the record, the top E-mail was dated

1 4/21/92, 10:11 a.m. to R-O-G-E-R-M. Who is that?  
2 A Roger Martin.  
3 Q "Cc Betsey from Loretta Lynch," and at the  
4 bottom, and the subject is "Washington Post  
5 questions." The reply mail to Loretta from Roger  
6 Martin, subject re: Washington Post questions. The  
7 message is --  
8 A It is not from Roger Martin.  
9 Q Betsey, I'm sorry, cc Roger Martin. Thank  
10 you very much. It is dated 4/21/92, 10:32 a.m. The  
11 message is "I assume that the Cherry Valley questions  
12 are all related to Whitewater, aren't they? Are  
13 there any Whitewater files scattered outside your  
14 safekeeping?"  
15 So you had -- and I want to ask you these  
16 questions relating to the second question. You had  
17 Whitewater files in your safekeeping at this time?  
18 A I had information I had developed.  
19 Q Did you have any underlying document  
20 relating to Whitewater?  
21 A Yes.  
22 Q Okay. So information you had developed

1 includes materials you had gathered including, like,  
2 I think you've testified to accountant's worksheets?

3 A Yes.

4 Q And bank records?

5 A Anything that we had gathered.

6 Q Okay. So this is not simply work product,  
7 this is actual -- this is actual underlying documents  
8 that you had gathered?

9 A Yes.

10 Q You had these in your safekeeping; correct?

11 A I had them at the campaign.

12 Q Okay. Were there any Whitewater files that  
13 you know of, to use Ms. Wright's words, scattered  
14 outside your safekeeping at that time?

15 A There were Whitewater files at the campaign  
16 in a separate room with other files that the defense  
17 team used.

18 Q Okay. Were there any other Whitewater  
19 files that you knew of outside of these files?

20 A Well, there was whatever Charlie James  
21 had. There were the documents that Joly Redden had.  
22 There were documents that Jim McDougal had, there

1 were documents that the Rose Firm had.

2 Q Did you reply to this E-mail by Ms. Wright?

3 A I don't remember.

4 Q Incidentally, do you know what happened to  
5 the files that were stored in the campaign,  
6 Whitewater files?

7 A I left in June of 1992.

8 Q And they were still there, when you left,  
9 they were still in the separate room with all the  
10 other files that you had just testify to?

11 A Well, what are the "they"?

12 Q The Whitewater files.

13 A The files that I had, I put in a box.

14 Q You had files separate from the Whitewater  
15 files in the main room?

16 A I had my own files I had collected, and  
17 then there were other documents that were related --  
18 there were some mortgage deeds to lot 13.

19 Q Right. And those were kept in what we --  
20 what you testified to as the other room with the  
21 other files that the campaign used?

22 A Certain people in the campaign used, yes.

- 1 Q Okay. And with respect to your files, you  
2 said you put them in a box?
- 3 A Yes.
- 4 Q Did you take them with you?
- 5 A No.
- 6 Q What did you do with them?
- 7 A I took a file of materials I had written  
8 with me, that were copied.
- 9 Q Okay?
- 10 A And the other box I gave either to Betsey  
11 Wright or Cathy Jones.
- 12 Q Who is Cathy Jones?
- 13 A Betsey's secretary or assistant.
- 14 Q And did you give any instructions as to  
15 what to do with them?
- 16 A No, I said these are my Whitewater related  
17 files and my other campaign related files.
- 18 Q Did either Ms. Wright or Ms. Jones tell  
19 what you they were going to do with them?
- 20 A No.
- 21 Q Okay. So as we sit here today, do you know  
22 what happened to those files?

- 1 A No.
- 2 Q I think we've covered this in a roundabout  
3 way, but let me ask you the direct question: At no  
4 time during the 1992 campaign did you handle any  
5 records reflecting any billings by the Rose Law Firm;  
6 correct? By the Rose Law Firm to Madison Guaranty  
7 Savings & Loan?
- 8 A Correct.
- 9 Q Do you have any subsequent knowledge as to  
10 how those records found themselves in Washington in  
11 the White House residence book room?
- 12 A No.
- 13 Q I just remembered one last question I have  
14 to ask you about; otherwise I will lose my job.  
15 The document labeled DKSJN 28346, and it's a  
16 dot matrix document, and it is unlabeled, untitled.  
17 It appears to be printed on a dot matrix printer. It  
18 starts "Jim McDougal became a client of the Rose Law  
19 Firm in 1981." It is a two-page document, continuing  
20 to 28347. Do you have that in front of you?
- 21 A Yes.
- 22 Q Have you ever seen this document before?

1 A No.

2 Q There is handwriting both on the first page  
3 and on the second page of that document. Do you know  
4 whose handwriting that is?

5 A No.

6 Q And do you have any -- you stated you did  
7 not see this document. Do you have any information  
8 regarding this document, regarding who prepared the  
9 document, or the circumstances surrounding its  
10 preparation?

11 A I saw this document for the first time when  
12 you sent it to me this morning.

13 MR. DINH: Thank you very much.

14 THE WITNESS: Thank you.

15 MR. DINH: No questions.

16 MR. KRAVITZ: No questions at this time.

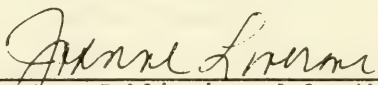
17 MR. KEKER: Thanks.

18 (Whereupon, at 8:40 p.m., the deposition  
19 was concluded.)  
20  
21

-----  
22 LORETTA LYNCH



I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

JULY 31, 2000

**DEPOSITION OF CHARLES E. PATTERSON  
IN RE: S. RES. 120**

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**TUESDAY, MAY 14, 1996**

**U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
Washington, DC.**

Telephone deposition of CHARLES E. PATTERSON,  
called for examination pursuant to notice of deposition, at 9:47 a.m.  
in Room 534 of the Dirksen Senate Office Building, before JOANNE  
LIVERANI, a Notary Public within and for the District of Colum-  
bia, when were present:

**ROBERT J. GIUFFRA, JR., Esq.  
Majority Chief Counsel  
LANCE COLE, Esq.  
Minority Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.**

**ROBERT A. GUTKIN, Esq.  
Pillsbury Madison & Sutro, L.L.P.  
1050 Connecticut Avenue, NW  
Washington, DC 20036  
On behalf of the Deponent.**

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## P R O C E E D I N G S

MR. GIUFFRA: Let's go on the record.

Good morning, Mr. Patterson. My name is Robert Giuffra. I am the chief counsel of the Senate Banking Committee in Washington. With me is Lance Cole who is Minority deputy special counsel.

This telephone deposition is being conducted pursuant to Senate Resolution 120. This resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, and other related matters.

The focus of our deposition today will be various reports prepared by the Pillsbury, Madison, Sutro law firm in connection with possible civil claims that might be brought by the RTC against various parties.

This is a deposition in advance of public hearings. There is some possibility you might be asked to testify. The present plan, although it is subject to change, is that testimony will be sought

4

for this coming Thursday afternoon, in Washington.

The procedure for the conduct of depositions before the Special Committee is as follows: I will ask you a series of questions; then Mr. Cole will ask you a series of questions.

You will be testifying under oath. As an experienced litigator, I am sure you know drill with regard to depositions, but if you don't understand a question, let us know and we will rephrase it, et cetera. The court reporter will prepare a record of the questions and answers. The deposition will be treated as Committee confidential until the commencement of the hearings. Prior to the hearings you will have an opportunity to review a copy of your deposition.

You have a right to be represented by counsel. And I understand that Mr. Gutkin will be the person representing you.

THE WITNESS: That's correct.

MR. GIUFFRA: If Mr. Gutkin would state an appearance for the record.

MR. GUTKIN: Robert Gutkin, appearing on



1   behalf of Charles Patterson.

2           MR. GIUFFRA: As Mr. Gutkin is aware,  
3   having been involved in a prior deposition, the  
4   procedure for the conduct of depositions is set forth  
5   in Senate Resolution 120. Objections to the form of  
6   question will be noted for the record; counsel can  
7   also object on grounds of privilege or relevance; and  
8   the Chairman of the Committee may rule on the  
9   objections if the witness refuses to answer a  
10   question.

11          Either Mr. Patterson or Mr. Gutkin, do you  
12   have any questions?

13          THE WITNESS: No questions.

14          MR. GUTKIN: No.

15          MR. GIUFFRA: We're ready to start. The  
16   court reporter here in Washington will swear in  
17   Mr. Patterson.  
18   Whereupon,

19           CHARLES E. PATTERSON  
20   was called as a witness and, having first been duly  
21   sworn, was examined and testified as follows:

22                           EXAMINATION

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1           BY MR. GIUFFRA:

2           Q   Mr. Patterson, it would be helpful if you  
3   could fax to the Committee a copy of your biography,  
4   setting forth your professional experience, if you  
5   have one.

6           A   I have a resume. My biography hasn't been  
7   written yet.

8           Q   The same thing, if you could send us a copy  
9   of your resume by fax maybe this afternoon so we can  
10   avoid all the background questions; okay?

11          A   Be happy to.

12          Q   If you would state your name and spell it  
13   for the record.

14          A   Charles E. Patterson, spelled  
15   P-a-t-t-e-r-s-o-n.

16          Q   Now, Mr. Patterson, you participated in a  
17   litigation analysis that was conducted by the  
18   Pillsbury firm for the RTC in connection with whether  
19   it was possible for the RTC to bring a civil action  
20   against various persons in connection with Madison  
21   Guaranty Savings & Loan association; am I right?

22          A   Yes.

1 Q What was your -- what were your  
2 responsibilities in connection with that litigation  
3 analysis?

4 A I was the partner in charge of the  
5 engagement with the RTC.

6 Q What does it mean to be the partner in  
7 charge of the engagement?

8 A From the firm's standpoint, the partner who  
9 had overall responsibility for accomplishing the work  
10 for the client, the principal contact with the  
11 client, would be responsible for staffing the  
12 engagement, and responsible of course for --  
13 ultimately responsible for seeing that bills were  
14 rendered to the client.

15 Q And what was the role of your partner,  
16 Bruce Ericson, in connection with -- why don't we  
17 just call this the RTC project for shorthand.

18 A Okay. Bruce had worked for the RTC before,  
19 he had worked with me on one prior case, RTC versus  
20 Dean in Arizona; was well known to the RTC,  
21 particularly for Bruce's abilities and experience in  
22 working with forensic accountants.

1 I think it was the intention, in the  
2 initial conversation with the RTC, that Bruce would  
3 work on the case, that Bruce and I together would  
4 work on the case. And I would say that, you know,  
5 Bruce was certainly my right hand man, and was  
6 responsible for probably 50 percent or more of the  
7 assignment.

8 Q Now, was Mr. Ericson the billing partner on  
9 the matter?

10 A Yes.

11 Q And what is the distinction between being  
12 the billing partner as opposed to the partner in  
13 charge?

14 A Well, the billing partner would examine the  
15 billing records each month, provide those as  
16 necessary, make sure that we have all the costs  
17 together the best that we can, and render the bill to  
18 the client.

19 I don't know if you've ever billed the  
20 government before. It is a time-consuming process,  
21 and one which, I think in this case, I was pleased to  
22 see Bruce take on.

1 Q Now, am I correct that your firm prepared  
2 reports in connection with several different areas in  
3 connection with this project; is that right? Hello?

4 A Yes. I'm sorry.

5 Q So one of the areas was the Castle Grande  
6 project; right?

7 A That's correct.

8 Q Another was 1308 Main Street?

9 A That's correct.

10 Q Another was Whitewater?

11 A Correct.

12 Q Another was the Rose Law Firm and its role?

13 A Correct.

14 Q And another was sort of the Frost & Company  
15 issues?

16 A Yes.

17 Q Were there any other areas which you were  
18 examining in connection with this project?

19 A We had initially started out doing some  
20 work on Campobello, which was a development in New  
21 Brunswick, Canada. That was subsequently transferred  
22 to Jordan & Keyes, who completed that work.

---

10

1 We did some initial work, actually, on all  
2 of the projects that Madison did, given the way this  
3 developed, okay, and I am trying to think what else  
4 we did.

5 Q That might be projects such as Maple Creek  
6 Farms?

7 A Yes, and we also began an examination into  
8 whether there was any kind of over-arching check  
9 kiting scheme being perpetrated by Madison, I guess,  
10 through the use of all these developments; if they  
11 were all tied together in some kind of planned check  
12 kiting conspiracy.

13 Q Now, it is my understanding you were  
14 responsible for the Castle Grande aspect of this  
15 report; is that right?

16 A Yes. Castle Grande.

17 Q And also 1308 Main Street?

18 A Yes.

19 Q And Mr. Ericson was responsible for the  
20 Whitewater aspect?

21 A Yes, I mean that responsibility included --  
22 we would be -- Castle Grande was a different kind of

1 investigation than Whitewater, and for instance in  
2 Whitewater, the analysis by the accountants, Tucker  
3 Alan, was of the largest significance in Whitewater,  
4 and that's something that Bruce has a considerable  
5 amount of expertise in.

6 Q And then on the Rose Law Firm aspect of  
7 this was Mr. Ericson?

8 A Yes. The Rose Law Firm had been -- I think  
9 there had been an investigation done of the Rose Law  
10 Firm by the Inspector General's Office of the RTC, so  
11 initially we had not investigated them. It came to  
12 us later when it was determined that an independent  
13 investigation had to be done.

14 Q Do you know why?

15 MR. COLE: What about Frost & Company, just  
16 to finish out the list here?

17 THE WITNESS: Frost & Company again was  
18 something that came as -- that came later on.

19 MR. COLE: And were you responsible for  
20 that primarily, or was that Mr. Ericson,  
21 Mr. Patterson?

22 THE WITNESS: Bruce again; that was an

1 accounting type problem, and again, that's Bruce's  
2 area of expertise.

3 MR. COLE: Thank you.

4 BY MR. GIUFFRA:

5 Q Now, if I can just focus your attention to  
6 the initial efforts by the firm to secure this  
7 business from the RTC?

8 A Okay.

9 Q Did the initial contact come through  
10 yourself or through Mr. Ericson?

11 A The initial contact was a phone call from  
12 Mark Gabrellian to me, sometime around the end of  
13 January, first part of February of 1994.

14 Q What did Mr. Gabrellian communicate to you  
15 during the course of that conversation in January of  
16 1994?

17 A Mark told me that the RTC was going to --  
18 well, first of all, that the RTC had a problem and  
19 that was that the statute would run with respect to  
20 actions which may be brought or could be brought  
21 arising out of Madison Guaranty, I think on the 28th  
22 of February 1994.



1 If it wasn't extended, it would run at that  
2 period of time. They needed to have a firm that  
3 could do an investigation and evaluate the documents  
4 available, and the reports that had been prepared  
5 before, and potentially file an action in advance of  
6 the statute run. In other words, in less than a  
7 month. That they would like to have our firm bid on  
8 that. And Mark had worked with Bruce and me on the  
9 Dean case.

10 And he said he was asking us to bid because  
11 of the fact that that had been a relatively high  
12 profile case, and in the RTC's opinion, we had  
13 handled that well, and with discretion. And so we  
14 bid on the case.

15 Q Now, in bidding on the -- and I apologize,  
16 that's an internal Senate buzzer indicating, I think,  
17 that the Senate is now going into session. It just  
18 stopped.

19 In bidding on this matter, did you prepare  
20 the initial bid request?

21 A Bruce would have prepared the initial bid  
22 request. He has done it before. He's got the forms

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14

1 on his software.

2 Q Did you review the request?

3 A Yes.

4 Q In that bid request, did you describe or  
5 indicate which lawyers at your firm would be doing  
6 the work?

7 A I think we put some names down. But at  
8 that point in time, we knew it was probably going to  
9 exceed that number. We were just trying to reach out  
10 for anybody that we could get.

11 Q Did you identify Mr. Jay Stephens as  
12 someone who would be working on this matter, if  
13 you --

14 A He was one of the partners that was  
15 identified, yes.

16 Q The partners who were identified consisted  
17 of Bruce Ericson, yourself, Mr. Stephens; anyone  
18 else?

19 A John Garrett.

20 Q Okay. Is he a person in San Francisco or  
21 L.A.?

22 A In our Orange County office.

1 Q Anyone else?

2 A I think we probably identified a number of  
3 associates. And we knew -- at the time I knew we  
4 were going to have to -- if we were going to be able  
5 to do anything by the end of February, we were going  
6 to have to put an awful lot of people on it  
7 immediately, as many people as we could find.

8 MR. COLE: How did Mr. Stephens come to be  
9 selected, Mr. Patterson? I understand from your  
10 prior testimony that both you and Mr. Ericson had  
11 worked for the RTC previously. Was that the case  
12 with Mr. Stephens, or was he selected for other  
13 reasons?

14 THE WITNESS: Jay was, at that time,  
15 working on a case for the RTC which I think was the  
16 Walde case; W-a-l-d-e, I think that's spelled. Also  
17 it was important to the RTC that the firm that they  
18 retained have a Washington office. Given those two  
19 things it was logical to have Jay work on it.

20 BY MR. GIUFFRA:

21 Q Was it important to the RTC that the  
22 person -- one of the partners involved in this matter

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16

1 have experience with criminal law, and particularly  
2 as a prosecutor?

3 A I think that would have -- initially we  
4 thought that might have some bearing. I had  
5 experience as a prosecutor but mine was certainly  
6 more remote than Jay's.

7 Q You had been a prosecutor in the Army?

8 A In the Marine Corps.

9 Q In your communications with the RTC prior  
10 to the retention of Pillsbury, was there any  
11 discussion of what role Mr. Stephens would play in  
12 connection with this project?

13 A No. I don't recall any.

14 Q After -- now, the firm was retained when?

15 A I believe it was the first part of  
16 February -- and I don't know the exact date -- of  
17 1994. It was in the first week of February.

18 Q Did anyone from the RTC communicate to you  
19 the names of the other firms that had submitted bids  
20 for this project?

21 A No, they did not.

22 Q Do you know who the other firms were?

1           A    I do not know.

2           Q    What was Mr. Stephens's role, as far as you  
3 know, in connection with this project from February  
4 '94 to the present? That's kind of a long question,  
5 but why don't you give us your narrative answer.

6           A    Okay. Jay's first role was to gather  
7 documents that the RTC had in Washington, from I  
8 believe their investigations, to bring them into the  
9 office in Washington so that we could examine those  
10 and evaluate those. I think there were some OTC  
11 documents from the Office of Thrift -- there were  
12 some documents from the Office of Thrift  
13 Supervision.

14               There were also some documents, I believe,  
15 at that time from the Inspector General's Office of  
16 the RTC. All of those were located in Washington and  
17 we had to bring them together in the Washington  
18 office, get someone to organize them so that we could  
19 begin taking a look at them. That was Jay's, I  
20 believe, first involvement.

21               The next thing was we had to try to obtain  
22 as many documents as we could from the Independent

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1 Counsel. And in particular, we were looking for  
2 those documents that were Madison Guaranty records  
3 that the Independent Counsel had obtained before we  
4 had received the assignment. There was a large  
5 warehouse full of documents -- I am saying large  
6 warehouse.

7               There was documents in a warehouse in  
8 Little Rock, Arkansas that the Independent Counsel  
9 had subpoenaed and had taken, and we were trying to  
10 get copies of those. They prepared some initial  
11 petitions for release of those documents, under Rule  
12 6(e) of the Federal Rules of Criminal Procedure.

13               Following that, this was -- then after the  
14 end of February, when it became clear that there --  
15 the extender statute had been passed by Congress and  
16 we had some time to work on this. We decided that  
17 the best way to staff the case would be to have  
18 Jay -- or I'm sorry, to have Bruce handle those  
19 issues that appeared that they were going to be  
20 primarily accounting issues. And that would be  
21 determining initially whether there appeared to be  
22 some sort of what we called an over-arching check

1 kiting scheme and handling an evaluation of  
2 Whitewater, which we looked at as being principally  
3 an accounting matter.

4       Myself, together with Mike Finnegan and Ken  
5 Goss out of the Los Angeles office, would handle the  
6 on-the-ground investigations in Arkansas. The  
7 reasons for doing that were, number one, because of  
8 his expertise; number two, the fact that I had  
9 practiced in Kansas City for some 19 years before  
10 coming out here. I knew several members of the bar  
11 in Little Rock, and some members of the federal  
12 judiciary. And I also knew Bob Fiske who was then  
13 the Independent Counsel. It made sense then for me  
14 to be in that kind of a situation.

15       John Garrett, who initially worked as a  
16 real estate partner, his work was initially  
17 evaluating the documents from a real estate  
18 standpoint.

19       Now, after the initial evaluation and  
20 probably that was that was not going to be needed in  
21 order to make a determination as to what courses of  
22 action we had, the next thing that he did, that I

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1 think was a principal piece of work, was that he  
2 assisted in our trying to select forensic accountants  
3 to examine the documents that we were able to obtain  
4 from the Independent Counsel with respect to  
5 Whitewater, and also with respect to the question of  
6 whether there was a check kiting scheme going on.

7       After that, I think Jay was consulted from  
8 time to time by both Bruce and I, just simply to run  
9 something by and to get a third take, but that would  
10 have been, I think, infrequent. I believe he did  
11 review drafts of the Whitewater report.

12       Q   Now when you say "the Whitewater report,"  
13 you mean the April 24, 1995 report, the preliminary  
14 report?

15       A   It seems to me that he reviewed perhaps a  
16 draft of the preliminary report, and that may have  
17 been it.

18       Q   Did he review any of the other reports as  
19 far as you know?

20       A   I don't know. I thought he may have but  
21 since then, when I told Bruce, Bruce thought the only  
22 thing he had reviewed was one copy of the Whitewater



1 report.

2 Q One draft?

3 A Yes.

4 Q Did he do any other work that you can  
5 recollect on this project?

6 A I don't believe so.

7 Q Okay. Now, did you have any communications  
8 with anyone at the RTC after Pillsbury was retained  
9 about how the matter would be staffed internally at  
10 Pillsbury?

11 A Yes.

12 Q Could you tell us about those  
13 conversations.

14 A I had conversations with Mark Gabrellian,  
15 who was my principal contact at the RTC, about how we  
16 intended to staff the case; and he agreed with my  
17 determination as to how we should do it.

18 Q So you were the person at the Pillsbury  
19 firm that made the judgments as to how the matter  
20 would be staffed; is that right?

21 A Ultimately I would. I would consult with  
22 the other people involved, yes.

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22

1 Q Did you have any conversations with anyone  
2 at the RTC about what role Mr. Stephens would play in  
3 connection with this project at any time?

4 A Yes.

5 Q Could you tell us about those  
6 conversations.

7 A Essentially it was the same conversation  
8 with Mark, that Jay would still -- Jay's role was  
9 still to be in the Washington office and available  
10 for anything that needed to be done in Washington.  
11 Certainly, if there were matters of criminal law that  
12 became important to us in this investigation,  
13 although we couldn't see them at point in time, Jay  
14 would be consulted.

15 Q Why couldn't you see that there might be  
16 matters of criminal law at issue in the investigation  
17 at the beginning?

18 A Well, because we were looking at a civil  
19 investigation to determine whether there was  
20 cost-effective civil litigation that we could bring.

21 Q Wasn't there a possibility that you might  
22 come across possible criminal misconduct in the

1 course of your investigation?

2 A Oh, absolutely.

3 Q Did you have any further conversations with  
4 anyone at the RTC about Mr. Stephens's role?

5 A No, except the understanding that Jay's  
6 role would be reduced, and John Garrett would no  
7 longer be working on the project either.

8 MR. COLE: This is Lance Cole. Just to be  
9 as clear as possible on this, the recommendation  
10 concerning the role of Mr. Stephens was a  
11 recommendation that you made to the RTC and  
12 Mr. Gabrellian then agreed to?

13 THE WITNESS: I can't remember whether I  
14 made the recommendation or whether I just simply  
15 discussed what my ideas were as far as staffing the  
16 case, and those were ideas which Mark agreed were, or  
17 whether we mutually discussed the thing and came to  
18 that conclusion.

19 BY MR. GIUFFRA:

20 Q Did you have any conversations at any time  
21 with anyone else at the RTC about Mr. Stephens's role  
22 in connection with this project?

1 A No, I don't believe I did.

2 Q Did you have any -- do you know Ellen  
3 Kulka? Hello?

4 A Yes.

5 Q Who is Ellen Kulka?

6 A Ellen Kulka was at that time the general  
7 counsel of the RTC.

8 Q Did you have any communications with  
9 Ms. Kulka with regard to Mr. Stephens's role -- about  
10 Mr. Stephens's role in this project?

11 A No, I don't believe I had any  
12 communications with her about Jay's role.

13 Q Did you ever have any conversations with  
14 Ms. Kulka in which she indicated any dissatisfaction  
15 or displeasure with anything that Mr. Stephens said  
16 at a meeting?

17 A No, I don't. It was at -- the only meeting  
18 that I recall would have been one meeting when Jay  
19 and I both met with Ellen Kulka.

20 Q And after the meeting, did Ms. Kulka say  
21 anything to you about Mr. Stephens?

22 A No.

1 Q When was the meeting held, if you can  
2 recall?

3 A I want to say probably sometime in March of  
4 1994. It would have been around that period of time.

5 Q Was it held in Washington?

6 A Yes.

7 MR. COLE: Who else was present other than  
8 yourself, Ms. Kulka, and Mr. Stephens?

9 THE WITNESS: Mark Gabrellian, and perhaps  
10 Tom Hindes.

11 BY MR. GIUFFRA:

12 Q Tom Hindes is with the RTC?

13 A Right.

14 Q We obtained testimony from Mr. Ericson in  
15 which he indicated that you had indicated to him that  
16 Ms. Kulka had indicated to you that she had disliked  
17 something that Mr. Stephens had said at a meeting.  
18 Does that at all refresh your recollection?

19 A I think -- I don't know what Bruce said,  
20 but I think that what -- it wasn't anything that  
21 Ms. Kulka said to me, but it was fairly clear from  
22 the meeting that there was a little bit of a

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1 personality clash between the two of them. Those of  
2 us from, I think, outside Washington might ascribe to  
3 the fact that you have two people who have respected  
4 positions in government and were trying to sort out  
5 just exactly what their relationship is; Jay being a  
6 former United States Attorney, and Ellen Kulka being  
7 general counsel of the RTC; and Jay now being in the  
8 role of being a lawyer representing, and in fact,  
9 working for Ms. Kulka.

10 I just got the impression that she was not  
11 pleased with, I guess, the degree of respect that Jay  
12 may be showing her.

13 Q Was there anything specifically that  
14 occurred at the meeting that left you with the  
15 impression that there was a personality clash between  
16 Ms. Kulka and Mr. Stephens?

17 A No, that's just my general impression.

18 Q Did Ms. Kulka say anything to you  
19 indicating that she believed there was a personality  
20 clash between her and Mr. Stephens?

21 A No, she did not.

22 Q Did Ms. Kulka in any way indicate to you

1 that she had a concern with Mr. Stephens  
2 participating in this project?

3 A No, she did not.

4 Q Did anyone at the RTC at any time ever  
5 indicate to you any concern that the RTC had with  
6 Mr. Stephens's participation in this project?

7 A No, not with his participation in this  
8 project.

9 Q With anything else?

10 A Anything else? I don't understand the  
11 question.

12 Q Well, your answer seems to suggest I didn't  
13 phrase the question properly, and if I rephrase the  
14 question, I will get an answer which might elicit  
15 some testimony that might be of relevance to the  
16 Committee.

17 MR. GUTKIN: That's vague and ambiguous.  
18 Maybe you can try and rephrase the question.

19 MR. GIUFFRA: Why don't we have the  
20 reporter read back my last question and the answer.  
21 (The reporter read the record as requested.)

22 BY MR. GIUFFRA:

1 Q You indicated your testimony is -- strike  
2 that.

3 You testified that no one ever indicated to  
4 you any concern with Mr. Stephens's participation in  
5 the project; right?

6 A Yes.

7 Q Did anyone at the RTC in any way, shape, or  
8 form indicate to you any concern about Mr. Stephens  
9 and this project, any role he might have in this  
10 project?

11 A The answer to that question is no.

12 Q Did you have any further discussions with  
13 anyone at the RTC about Mr. Stephens?

14 A No.

15 Q Now, are you aware of some fairly  
16 publicized statements ascribed to Presidential  
17 assistant George Stephanopoulos about Mr. Stephens  
18 and his role in this project?

19 A I am aware of publicity, I think initially,  
20 Jay and this project -- and a characterization --  
21 whether it was by the press or by someone else, I  
22 don't know -- that this was a -- was the Jay Stephens



1 investigation.

2 Q What was your understanding of  
3 Mr. Stephanopoulos's statements about Mr. Stephens?

4 A To be honest with you, I don't recall  
5 Mr. Stephanopoulos's statements about Mr. Stephens.

6 Q Do you recall that Mr. Stephanopoulos made  
7 some statements about Mr. Stephens?

8 A If you refresh me as to what the subject  
9 was, I might --

10 Q Mr. Stephanopoulos indicated to a fellow  
11 person in the administration that he was concerned  
12 about the decision that was made to hire Mr. Stephens  
13 to prepare this report.

14 A Oh, all right, yes.

15 Q Are you aware of those statements by  
16 Mr. Stephanopoulos?

17 A Yes.

18 Q What's your understanding of those  
19 statements?

20 A My only understanding would be that he made  
21 them.

22 Q Did you ever discuss those statements

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1 with -- strike that.

2 Let's call it the Stephanopoulos  
3 statements; is that fair?

4 A Yes.

5 Q Did you ever discuss the Stephanopoulos  
6 statements with anyone at the RTC?

7 A Probably with Mark Gabrellian, I would  
8 guess, because that subject came up. And by "that  
9 subject," I mean just simply the publicity that  
10 seemed to be swirling around the fact that Pillsbury  
11 had been hired and Jay was a partner in it.

12 Q Do you recall anything about the --  
13 anything specifically about your discussions with  
14 Mr. Gabrellian about the Stephanopoulos statements?

15 A Only that it seemed to me that it was  
16 typical of the press to find the -- to find a great  
17 slant to having Jay Stephens investigating the  
18 President.

19 Q Did you discuss anything further with  
20 Mr. Gabrellian about Stephanopoulos's statements  
21 about Jay Stephens?

22 A No.

1 Q So the only conversation you had with  
2 Mr. Gabrellian concerned the fact that you noted --  
3 strike that.

4 The only conversation you had with  
5 Mr. Gabrellian was to note the fact that the press  
6 was making an issue of Stephanopoulos's statements  
7 and that was not surprising?

8 A Well, it wasn't surprising that, you know,  
9 that the whole furor that arose at that period of  
10 time about Jay supposedly being the one who was  
11 investigating the President of the United States, it  
12 wasn't surprising that that was -- the press grabbed  
13 that and ran with it. It makes a better story than  
14 saying that someone else was doing it.

15 Q Did you have any further discussions with  
16 Gabrellian about perhaps -- strike that.

17 Did you have any further discussions with  
18 Gabrellian about Stephanopoulos's statements?

19 A No.

20 Q Did you have any discussions with anyone  
21 else at the RTC about Stephanopoulos's statements?

22 A No, I don't believe so.

1 Q Now, within the Pillsbury firm, did you  
2 have any discussions with anyone about the  
3 Stephanopoulos statements?

4 A I'm sure I had discussions with Jay;  
5 certainly had discussions with Bruce. I probably had  
6 discussions with the chairman of the firm at that  
7 time, Neal McNamara.

8 Q Do you recall anything about the  
9 conversations you had with Mr. Stephens about the  
10 Stephanopoulos statements?

11 A All I can recall is discussing with Jay at  
12 one point that, after those statements were made or  
13 some statements were made about Jay heading the  
14 investigation and I am not sure whether it was  
15 Stephanopoulos's statements or just the general  
16 statements in the press, that there were TV crews  
17 outside his house, et cetera.

18 And that's all I really recall about it,  
19 other than asking Jay whether, I think, whether this  
20 bothered him, whether he was okay with what was going  
21 on.

22 Q Were these communications both with

1 Gabrellian and Stephens before or after March of  
2 1994; March 1, 1994?

3 A I don't recall because I don't recall when  
4 the --

5 Q I will rephrase it. Was it before or after  
6 the statute of limitations was extended?

7 A It seems to me it was after, but that would  
8 depend on when the publicity arose.

9 Q Did Mr. Stephens in any way indicate to you  
10 that he thought it might be best if he limited his  
11 participation in this project?

12 A I don't think so. No.

13 Q Did you make a statement along those lines  
14 to Mr. Stephens?

15 A No.

16 Q Did you discuss -- what do you recall about  
17 your discussions with Mr. Ericson about this  
18 Stephanopoulos statements?

19 A Simply the same thing. That seemed to be  
20 the usual press -- and that is grab what is the most  
21 lurid or most exciting slant on the story they can  
22 give it and ride with that.

1 Q Now, the chairman of your firm, what do you  
2 recall about the communications with him about the  
3 Stephanopoulos statements?

4 A Simply to the same effect. At that point  
5 in time, I was vice chairman of the firm, so Neal and  
6 I would be talking every day about just about  
7 everything at that point in time.

8 Q So there were no communications with anyone  
9 within Pillsbury to the effect that perhaps  
10 Mr. Stephens should have a reduced role in this  
11 project because of the potential for adverse  
12 publicity?

13 A No.

14 Q The potential for adverse publicity with  
15 regard to Mr. Stephens, did that ever enter into your  
16 decisions with regard to the staffing of the project?

17 A No.

18 Q Have you ever been involved in partisan  
19 politics?

20 A Have I been involved in partisan politics?

21 Q Yes.

22 A My involvement -- by making a contribution

1 every now and then, perhaps, that would be about the  
2 limit of it.

3 Q Have you made a lot of contributions or  
4 just a few contributions?

5 A Oh, I imagine over the period of time, if I  
6 lumped together all my contributions, I could buy a  
7 TV set.

8 Q You are not what's described as a big  
9 giver, I guess, unless it is perhaps a big screen TV?

10 A Exactly.

11 Q Do you have any understanding with regard  
12 to Mr. Ericson's role in partisan politics, or  
13 involvement?

14 A He may have even less than I do.

15 Q Now you have probably seen press accounts  
16 referring to the work of the Pillsbury firm as the  
17 so-called Stephens report?

18 A Yes.

19 Q Is that a fair characterization of the  
20 reports prepared by Pillsbury?

21 A Calling them the Stephens report?

22 Q Correct.

1 A No.

2 Q So you don't view Mr. Stephens as the  
3 author of these reports?

4 A No, he was not the author of the reports.

5 You know, I much prefer calling them the  
6 Pillsbury reports.

7 Q I think we sort of covered this already,  
8 but just to clear it up, as far as you know, the only  
9 role that Mr. Stephens had with regard to any of  
10 these reports would have been perhaps reviewing a  
11 draft of the April 24, 1995 Whitewater report?

12 A Yes.

13 Q As far as you know -- strike that.

14 You were responsible for the report dated  
15 December 19, 1995 which is entitled, quote, "A report  
16 on certain real estate loans and investments made by  
17 Madison Guaranty Savings & Loan and related  
18 entities," close quote; correct?

19 A Yes.

20 Q Did Mr. Stephens provide any comments to  
21 you in connection with this report?

22 A No, he did not.



1 Q So he had, as far as you know, nothing to  
2 do with the preparation of this particular report?

3 A That's correct.

4 MR. GIUFFRA: Off the record.

5 (Discussion off the record.)

6 BY MR. GIUFFRA:

7 Q One other question along these lines. Your  
8 report, the December 19 report, is entitled "prepared  
9 by Pillsbury, Madison & Sutro," and it gives your  
10 address for Los Angeles, California?

11 A Yes.

12 Q Did Mr. Ericson play a role in the  
13 preparation of this report?

14 A Bruce, I believe, reviewed it, yes.

15 Q Did he provide comments to you?

16 A Very few.

17 Q When you say "very few," what do you mean  
18 by that?

19 A I think they would have been editorial, in  
20 terms of punctuation, spelling, things like that.

21 Q So no substantive comments?

22 A No.

1 Q No, right?

2 Now, if I could turn your attention -- and  
3 hopefully Mr. Brenner asked you to keep these things  
4 out with you -- on the April 24, 1995 report which is  
5 entitled "Madison Guaranty Savings & Loan and  
6 Whitewater Development Corporation, Inc." Are you  
7 aware of that report?

8 A Yes, I am aware of it. Let me see if I can  
9 find it here. Yes.

10 Q Now, that report says prepared by  
11 Pillsbury, Madison, Sutro, San Francisco,  
12 California --

13 A Yes.

14 Q -- do you see that?

15 You did not draft this report; right?

16 A No, I did not.

17 Q Did you provide comments on this report?

18 A Yes, I believe I did.

19 Q Did you provide substantive comments on  
20 this report?

21 A I don't believe so.

22 Q So your comments would have just been

1 limited to stylistic suggestions?

2 A Yes, because I think I was -- I was present  
3 during a lot of the initial workup by Tucker Alan of  
4 the analysis of the Whitewater accounts, and the  
5 movement of money. And I think I also was present  
6 for discussions as to had -- or what we may have  
7 found here or what potential actions we had. But  
8 Bruce was the author of this report, I think almost  
9 solely.

10 MR. GIUFFRA: Can we just take a brief  
11 break. Someone came in to pick up the tape from the  
12 court reporter.

13 (Recess.)

14 MR. GIUFFRA: Could you read back the last  
15 answer.

16 (The reporter read the record as requested.)

17 BY MR. GIUFFRA:

18 Q Mr. Patterson, when you indicate that  
19 Mr. Ericson was the author of this report almost  
20 solely, what do you mean by that?

21 A I am not certain how much input there was  
22 from the people from Tucker Alan. I am certain there

1 was, in terms of their preparing the accounting and  
2 reporting to Bruce, but I don't know if they took any  
3 role in actually drafting a portion of the report.  
4 My sense is that they supplied information and Bruce  
5 drafted it.

6 Q Did anyone else at your firm provide any  
7 substantive comments -- strike that.

8 Did any other partners of your firm provide  
9 any other substantive comments to Mr. Ericson in  
10 connection with this report?

11 A I don't believe so. You would have to ask  
12 Bruce.

13 Q Let me turn to another report. This is the  
14 supplemental Madison Guaranty-Whitewater report,  
15 dated December 13, 1995.

16 A I have it.

17 Q Okay. Who prepared this report?

18 A Bruce.

19 Q Did anyone at your firm provide any --  
20 strike that.

21 Did any other partners in your firm provide  
22 any substantive input in connection with the

1 preparation of this report?

2 A Not to my knowledge. Bruce could tell you  
3 if that happened.

4 Q Did you make any substantive comments on  
5 this report?

6 A I don't believe I did.

7 Q Stylistic comments?

8 A Probably very few on this one.

9 Q Let me turn your attention to another  
10 report. This is December 28, 1995. It is called "a  
11 report on the representation of Madison Guaranty  
12 Savings & Loan by the Rose Law Firm."

13 A Yes.

14 Q Okay. Who prepared this report?

15 A That would have been Bruce.

16 Q Did any partners at your firm, other  
17 partners at your firm provide any substantive  
18 comments in connection with the preparation of this  
19 report?

20 A I think I may have; probably some of the  
21 information that's in here would have been things  
22 that came out of our investigation in Little Rock,

1 but I don't think, with respect to the draft of the  
2 report, there were any substantive comments made, at  
3 least by me. I don't know about anybody else.

4 MR. COLE: And Mr. Patterson, when you say  
5 your "investigation in Little Rock," are you  
6 referring to your investigation of matters relating  
7 to the Castle Grande development?

8 THE WITNESS: Yes, I am talking -- well,  
9 the investigation into that, and of course, when we  
10 had a witness, if the witness was involved in any  
11 other of the transactions, we would ask them about  
12 that.

13 MR. COLE: But in the course of those  
14 witness interviews or depositions, you were  
15 investigating the Castle Grande matter?

16 THE WITNESS: Well, our focus was Castle  
17 Grande, yes, but if someone had also been involved in  
18 Maple Creek or Campobello, or even Whitewater, then  
19 we certainly would question them about that.

20 MR. COLE: Of course. Thank you.

21 BY MR. GIUFFRA:

22 Q So what you are saying is Mr. Ericson had

1 available to him the work that went into your  
2 December 19 report and would have incorporated that  
3 in drafting his December 28 report on the Rose Law  
4 Firm?

5 A He would have had that; he would have had  
6 whatever information had been gathered by the  
7 Inspector Generals -- the Inspector General of the  
8 RTC, whom I understand had done an investigation of  
9 the Rose Law Firm. He would have had, of course,  
10 whatever information we brought back about the Rose  
11 Law Firm, or documents that we had gotten regarding  
12 the Rose Law Firm that were in Arkansas.

13 Q Do you know whether Mr. Ericson ever  
14 communicated with the RTC IG in connection with  
15 preparing any of these reports?

16 A I believe that he did, but I don't know.  
17 You would have to ask Bruce.

18 Q Did you ever communicate with anyone that  
19 was in the RTC IG in connection with any of these  
20 reports?

21 A Not in connection with these reports, no.

22 Q In connection with anything else?

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1 A I think early on, and -- let's see. When  
2 we knew that the IG was doing an investigation of the  
3 Rose Law Firm, I believe that Mark Gabrellian put me  
4 in touch with someone from the Inspector General's  
5 Office, and we agreed that we would share with them  
6 any information which we had regarding the Rose Law  
7 Firm.

8 Q If I could turn your attention to -- this  
9 is something called a, quote, "supplemental report on  
10 the representation of Madison Guaranty Savings & Loan  
11 by the Rose Law Firm," close quote, dated February  
12 25, 1996. Who prepared this report?

13 A That would have been Bruce.

14 Q Did any other partners at your firm provide  
15 any substantive comments to Mr. Ericson in connection  
16 with the preparation of this report?

17 A Not that I know of.

18 Q Okay. You did not provide any substantive  
19 comments to Mr. Ericson in connection with this  
20 report?

21 A No, I don't believe I did. I think I may  
22 have talked to one of the witnesses.



1 Q Do you recall providing any comments at all  
2 to Mr. Ericson in connection with this report?

3 A Not of a substantive nature, no.

4 Q As of -- let's just take the period  
5 December, January, February, strike that -- December  
6 '95, January and February of 1996, which partners at  
7 your firm were working on this project at that time?

8 A It would still be myself, Bruce, Kent Goss,  
9 G-o-s-s, and Mike Finnegan. Both Mike and Ken had  
10 become partners -- I think Ken in '95, January 1,  
11 1995, and Mike on January 1, 1996.

12 Q And you don't have any understanding as to  
13 whether Mr. Goss or Mr. Finnegan reviewed any of  
14 these reports?

15 A No, I don't. Bruce could tell you that.

16 Q So would it be fair to say, at least with  
17 regard to the Whitewater and the Rose reports, they  
18 are more fairly characterized sort of as the Bruce  
19 Ericson reports?

20 A Yes. We would like to think of them as  
21 Pillsbury reports but they certainly -- Bruce is the  
22 author of the reports.

1 MR. COLE: And Mr. Patterson, just to  
2 follow up on that question by Mr. Giuffra, you did  
3 review drafts of these reports; correct?

4 THE WITNESS: Oh, yes.

5 MR. COLE: And had you seen something in  
6 these reports that was either inconsistent with your  
7 understanding of the facts, or an analysis that you  
8 did not agree with, I take it that you would have  
9 given Mr. Ericson substantive comments of that  
10 nature?

11 THE WITNESS: Absolutely.

12 BY MR. GIUFFRA:

13 Q Along those lines, with regard to the  
14 Madison/Whitewater report, did you review the  
15 underlying investigative data, and by that I mean  
16 materials gathered or prepared by Tucker Alan or  
17 depositions or interview summaries?

18 A Yes.

19 Q In connection with the Rose report, did you  
20 review depositions, interview summaries, and  
21 underlying documents?

22 A I did not review all of the depositions or

1 interview summaries with respect to the Rose Law  
2 Firm. I would have done some of them, but not all of  
3 them.

4 Q Did you review all of the interviews and  
5 depositions with regard to the Madison/Whitewater  
6 reports?

7 A If you look at the -- taking them in two  
8 pieces, the April 24th one, I certainly would have  
9 been familiar with and reviewed the work done by  
10 Tucker Alan, and was familiar with the documents that  
11 we had wanted, particularly from the Office of  
12 Independent Counsel in Little Rock.

13 And I know would have reviewed any witness  
14 statements that were a part of that initial report on  
15 the secondary report. I again think that I did see  
16 all of the witness statements with respect to that.

17 Q That's the Whitewater report; correct?

18 A Yes.

19 Q But the Rose Law Firm report, you might  
20 have reviewed some of the witness statements or  
21 depositions; is that right?

22 A Yes.

1 Q Did you review the interview of  
2 Mrs. Clinton that was conducted by Mr. Ericson?

3 A I haven't -- I think I read part of it.

4 Q But you haven't read the entire interview?

5 A No.

6 Q Have you read the deposition of Webster  
7 Hubbell?

8 A No, I don't believe I have.

9 Q Have you read the deposition conducted by  
10 the Senate Banking Committee of Seth Ward?

11 A I can't recall whether I have reviewed Seth  
12 Ward's or not. I probably -- I may have, because I  
13 probably would have been interested in hearing what  
14 Seth had to say.

15 Q Now, in looking at the billing materials  
16 provided by Pillsbury to the RTC, it appears, at  
17 least to me, that the last date upon which time was  
18 billed by Mr. Stephens was January 1995, when he  
19 billed four hours to this matter. Does that sound  
20 right to you?

21 A Probably.

22 Q Did you have any discussions with anyone,

1 including Mr. Stephens, as to why he didn't bill  
2 any -- strike that. Bad question.

3 Do you know why Mr. Stephens didn't bill  
4 time on this matter after January 1995?

5 A I guess he wasn't doing any work on the  
6 matter.

7 Q Did you ever discuss with anyone why  
8 Mr. Stephens wasn't doing any work on the matter?

9 A There was just, at that point in time,  
10 nothing for Jay to do. I think at that time we had  
11 principally written all of the reports or had drafted  
12 all the reports we were going to draft, with the  
13 exception probably of picking up the Rose matter and  
14 Frost & Company.

15 Q As far as you know, did Mr. Stephens ever  
16 conduct any depositions or take any interviews in  
17 connection with --

18 A I don't believe he did.

19 Q You believe he did?

20 A I don't believe he did.

21 Q You don't believe he did.

22 Have you ever reviewed the Rose Law Firm

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1 billing records that were found at the White House in  
2 January 1996?

3 A I believe I looked at them, yes.

4 Q Are you aware of a letter between Mr. Ward  
5 and Mr. McDougal dated December 24, 1985 that was  
6 backdated?

7 A I am aware of that letter, yes. I think it  
8 was in our Castle Grande report, or mentioned in the  
9 Castle Grande report.

10 Q So you reviewed that letter; right?

11 A Yes.

12 Q Do you recall reviewing the deposition of  
13 someone by the name of Thomas Thrash?

14 A I took the deposition of Thomas Thrash.

15 Q Then you would be familiar with it.

16 A I haven't looked at in it a long time,  
17 but --

18 Q Now, if I could just turn your attention to  
19 a report, it is called "General report on the  
20 investigation of Madison Guaranty Savings & Loan and  
21 related entities." It is dated December 28, 1995.  
22 Do you have that?

1 A Yes.

2 Q If I could just direct your attention to  
3 the first page of text, to the, I guess the second  
4 full paragraph?

5 A Okay.

6 Q I would just like to discuss this paragraph  
7 with you, some of the statements. You first  
8 indicate -- before I go too far, was this written by  
9 Mr. Ericson or by yourself, this summary?

10 A I can't recall. It seems to me that I had  
11 done a summary at one point, but it also seems to me  
12 that Bruce may have done the final one.

13 Q Okay.

14 A Maybe a collaborative effort, but I am not  
15 certain.

16 Q In fact this paragraph I am focusing on  
17 appears almost verbatim in the reports?

18 A The one that starts "the argument was  
19 consistent with"?

20 Q No, below that, the next paragraph, "the  
21 focus of the investigation"?

22 A Okay.

1 Q Now it says here, first, quote, "a number  
2 of officers, directors, and other people involved  
3 with Madison Guaranty and related entities had been  
4 released from liability or discharged in bankruptcy  
5 and had only minimal assets to satisfy any judgment  
6 that the RTC might obtain against them," close  
7 quote.

8 Could you just provide for the record a  
9 little more background as to why your investigation  
10 was shaped by the fact that people had been released  
11 from liability or discharged from bankruptcy or had  
12 only minimal assets.

13 A Essentially what we were trying to find for  
14 the RTC was cost-effective civil litigation, was  
15 there -- I mean, our initial assignment would have  
16 been to find out whether there was some way that we  
17 could recover money for the RTC from -- arising from  
18 the failure of Madison Guaranty.

19 Q Now, did you have a concern at the outset  
20 that there might not be sufficient, shall we use the  
21 word deep pockets, that might make it possible for  
22 the RTC to make a meaningful recovery?



1 A Well, I think anytime you are looking at a  
2 case from a plaintiff's standpoint, that is one of  
3 the concerns that you have at the outset.

4 Q But was that a particular concern in this  
5 instance?

6 A Well, it was a particular concern in this  
7 instance, because some of the potential defendants  
8 had already litigated with the RTC; some had been  
9 released because of prior negotiations.

10 Q That would be with Mr. Ward?

11 A Mr. Ward, and I think Bill Henley is  
12 another example. Jim Guy Tucker had been released,  
13 except as to fraud claims with respect to one piece  
14 of property.

15 Q What was that property, Castle Sewer &  
16 Water?

17 A 35 acres he bought in Castle Grande.

18 Q So Tucker's exposure was just limited to  
19 that 35-acre parcel?

20 A No. With respect to that parcel, he had  
21 reached a settlement, and the release that he was  
22 given released him from all claims except for fraud

1 claims. So that if we were to find a cause of action  
2 against Jim Guy Tucker, we would have to find facts  
3 which would convince us that we could satisfy Rule 11  
4 of the Federal Rules of Civil Procedure in bringing  
5 an action against Jim Guy Tucker for fraud.

6 Q How was that -- would that be different  
7 than intentional misconduct?

8 A Fraud is a form of intentional misconduct.

9 Q So what you are saying is it would be more  
10 difficult to prove fraud as opposed to proving, for  
11 example, intentional misconduct resulting from unjust  
12 enrichment?

13 A Yes, and the hope is, with Tucker the hope  
14 is that you do have, when you are looking at this --  
15 not really the hope, but what you are really trying  
16 to analyze is are we going to have a fraud case  
17 because we have essentially two problems with Tucker;  
18 one is the scope of the release, the second is those  
19 claims that we were permitted to pursue under the  
20 extender statute.

21 Q Now, the next sentence begins "the losses  
22 associated with the number of the real estate loans

1 and projects were, standing alone, too small to make  
2 it likely that litigation could be cost-effective,"  
3 close quote. Now was that a judgment that you made  
4 near the outset of your investigation?

5 A Again, to a certain extent, it was a -- it  
6 was an impression that kind of directed how we were  
7 going to allocate our resources. It appeared that,  
8 for instance, the most likely sources of large  
9 damages were going to be Campobello and Castle  
10 Grande, that that was more than likely where we were  
11 going to have sufficient damages, in money terms,  
12 that we could begin to consider that lengthy  
13 litigation would be cost-effective.

14 That was only -- those were the ones where  
15 the amount in question was significant; in other  
16 words, it was probably important that we turn some  
17 resources to look at that. The idea that there may  
18 be an over-arching check kiting scheme appeared to be  
19 one in which there would be large damages, and if it  
20 ran through all the projects, would involve a number  
21 of different people, so that the potential number of  
22 defendants, were there a conspiracy, would be high.

1 Q Back in January, February 1994, did you  
2 have any discussions with anyone at the RTC about  
3 whether there might be cost-effective litigation?

4 A Yes.

5 Q What do you recall about those  
6 conversations?

7 A I think my initial conversations were  
8 pretty much what I've told you here, that these  
9 appeared to be the areas in which we would probably  
10 be able to find cost-effective litigation, assuming  
11 that we had people who could pay a judgment for other  
12 areas that were going to be investigated other than  
13 that, but these appear to be the areas in which we  
14 could concentrate resources if we are looking purely  
15 at the question of cost-effective litigation.

16 Q So that would be the Castle Grande and  
17 Campobello projects?

18 A They appeared at that time to be the  
19 largest ones. The third one would be the existence  
20 or nonexistence of a check kiting scheme that would  
21 run through all of the projects.

22 Q Back in the period January, February 19 --

1 strike the question.

2 In January or February 1994, did you have  
3 any discussions with the RTC about whether there  
4 might be any cost-effective litigation arising out of  
5 Whitewater?

6 A I think at that point in time, the guess  
7 was, in looking at it, that probably, unless  
8 Whitewater was a part of some overall conspiracy to  
9 move money around Madison Guaranty to other  
10 recipients, you know, whether it was used for --  
11 money was being laundered for campaign funds, or I  
12 think at one time there was a suggestion that money  
13 had been laundered through Madison for drug buys.

14 I mean, there were all sorts of things that  
15 got suggested to us. We were -- in that sense, in a  
16 cost-effective sense, Whitewater might be a microcosm  
17 of how money got laundered. Certainly the press was  
18 looking at it that way.

19 But I think Whitewater was never -- the  
20 decision to investigate Whitewater was always one  
21 that, I don't think there was ever any question about  
22 it, we were going to do it. And it had nothing to do

1 with, or very little to do with cost-effectiveness.

2 Q Did the client advise you that they wanted  
3 you to conduct an investigation into Whitewater  
4 regardless of whether there might be cost-effective  
5 litigation at the end of the road?

6 A Yes, I think they believed that the  
7 integrity of the agency was important at that point  
8 in time, and that that was being, in their judgment,  
9 being called into question by the press in the spring  
10 of '94, and that it was probably going to be  
11 necessary that we do that kind of an investigation.

12 Q Regardless of whether it might lead to  
13 litigation?

14 A Yes, sir.

15 Q Do you recall who at the RTC asked that  
16 this investigation go forward, notwithstanding  
17 whether it would be cost-effective to bring an action  
18 arising from Whitewater?

19 A Well, it was never put "regardless of  
20 whether it would be cost-effective," because,  
21 remember, at that point in time, we thought that  
22 there still might be some sort of overall conspiracy

1 involving all of these real estate projects --  
2 Whitewater, Maple Creek, Campobello -- a number of  
3 them in which money was being moved back and forth  
4 for purposes that had nothing to do with the  
5 development of the projects.

6 And as a consequence, Whitewater fit into  
7 that. We knew that it was going to be a while before  
8 we could get all of the Whitewater documents out of  
9 the Office of Independent Counsel because they were  
10 working with them at that point in time.

11 Q When did you make a judgment -- strike  
12 that.

13 When did you make a preliminary judgment  
14 that there would not be any -- strike that.

15 When did Pillsbury make a preliminary  
16 judgment that there would not be cost-effective civil  
17 litigation possible as a result of Whitewater?

18 A Well, I don't think we knew that until  
19 Tucker Alan finished their analysis.

20 Q Which would be when?

21 A Seems to me that it would have been the  
22 fall of 1994? Am I correct about that? Say, October

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1 or November. Bruce would know the date better than I  
2 do.

3 Q What about the Tucker Alan report was  
4 significant in determining that cost-effective  
5 litigation could not be brought arising from  
6 Whitewater?

7 A Tucker Alan reported to us that it appeared  
8 there was a maximum of some, what, 80- to \$90,000,  
9 somewhere in that range, of Madison Guaranty funds  
10 that had gone into Whitewater.

11 Q Did you ever do an investigation of how  
12 much it would cost to litigation -- strike that.

13 Did you ever do any kind of analysis of  
14 what it would cost to litigate a civil action  
15 involving Whitewater?

16 A Well, my guess is that if somebody even  
17 hired an attorney on the other side who would file  
18 motions to dismiss an answer, conduct discovery, do  
19 all of those things, and if we had to conduct civil  
20 discovery aimed only at Whitewater, that the cost  
21 would far exceed that, it seems to me it was  
22 something like \$88,000 figure.



1 Q When did you come to a preliminary judgment  
2 with regard to possible civil claims arising from  
3 Castle Grande?

4 A Preliminarily, I think the summer of 1994.

5 Q And what was the conclusion that you came  
6 to in the summer of 1994 about the cost-effectiveness  
7 of civil claims arising from Castle Grande?

8 A The conclusion was that it was marginally  
9 cost-effective.

10 Q And why would it have been marginally  
11 cost-effective?

12 A That damages in Castle Grande as estimated  
13 by the investigations division of the RTC were  
14 somewhere around \$4 million -- somewhat less than 4  
15 million, I think -- that --

16 Q 3.8 million; does that sound right?

17 A 3.8. That we would have to try to find a  
18 deep pocket, and the only one that appeared to be  
19 left in the case was, then, Jim Guy Tucker and there  
20 was some question as to how deep Jim Guy Tucker's  
21 pockets were at that point in time.

22 Certainly we knew that Tucker was likely to

1 vigorously defend any action that was brought against  
2 him, and that it would be expensive litigation. And  
3 we felt that it was marginally cost-effective.

4 And in looking at cost-effectiveness, it is  
5 not just the dollars you get out of it, but how  
6 strong the case was.

7 Q With regard to the possible case against  
8 Jim Guy Tucker, what was the damages that you  
9 estimated you might be able to seek in your  
10 complaint?

11 A If we could prove a civil conspiracy  
12 between or among -- let's put it that way -- Jim Guy  
13 Tucker, Jim McDougal, and David Hale, in some way  
14 tying them all to the purposes for all the sales of  
15 the property in Castle Grande and complicity in that,  
16 we thought that we could probably recover all of the  
17 damages that would arise out of the conspiracy,  
18 against any one coconspirator.

19 Q The whole 3.8 million?

20 A Yes.

21 MR. COLE: Did the fact that Mr. Tucker had  
22 been released of everything but fraud claims affect

1 your analysis, or since you were analyzing a  
2 potential civil conspiracy claim, did that --

3 THE WITNESS: The conspiracy was one to  
4 defraud so that wouldn't be a problem.

5 BY MR. GIUFFRA:

6 Q When did you first -- strike that.

7 Now, you were responsible for Castle  
8 Grande. So when did you first begin to investigate  
9 the possible role of Rose Law Firm in connection with  
10 Castle Grande?

11 A The role of the Rose Law Firm with respect  
12 to Castle Grande, I think first came up when we  
13 found, as a part of our investigation in some of the  
14 documents we looked at, people billing from the Rose  
15 Law Firm for work performed.

16 Q Is this a January 1986 bill?

17 A I can't remember the date, but I think it  
18 lists Hillary Clinton as the billing attorney.

19 Q Do you recall when that was that you  
20 identified this bill?

21 A I think we probably found that sometime in  
22 the spring of 1994.

1 Q When did Pillsbury first commence an  
2 investigation into what the Rose Law Firm's role  
3 might be with regard to Castle Grande?

4 A We did not commence that until we were  
5 asked to do so by the RTC. And we were asked to wait  
6 with respect to that, and not do anything with  
7 respect to that until the Inspector General completed  
8 their investigation.

9 Q Okay, now, the Inspector General completed  
10 its investigation in August of 1995; does that sound  
11 correct to you?

12 A I don't know.

13 Q Okay. But do you recall who you would have  
14 spoken to at the RTC about when and whether you  
15 should commence an inquiry into the Rose Law Firm's  
16 role with regard to Castle Grande?

17 A Sure, it would have been Mark Gabrellian,  
18 but I can't recall when that was.

19 Q Do you recall, did Mr. Gabrellian speak  
20 with you or did he speak with Mr. Ericson about  
21 whether you should look into Rose's role regarding  
22 Castle Grande?

1 A I don't recall.

2 Q And what do you recall was the substance of  
3 the communication from Mr. Gabrellian with regard to  
4 commencing an investigation into Rose?

5 A My understanding was that the IG had  
6 completed their investigation, but that that  
7 investigation had not really addressed the question  
8 of any potential liability of the Rose Law Firm for  
9 damages arising out of the Castle Grande  
10 transaction. And that it would be necessary or  
11 probably be necessary, in order to be complete in an  
12 investigation, to address that.

13 Q Do you recall anything more about  
14 communications between the RTC and your firm with  
15 regard to the Rose investigation?

16 A No, I don't. I think Bruce had the time,  
17 at that point in time, to take it on and did.

18 Q Did you have any communications with Jack  
19 Ryan?

20 A I have, I think, talked on two occasions to  
21 Jack Ryan.

22 Q What, if anything, do you recall about your

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1 communications with Mr. Ryan, who just for the record  
2 was the administrator of the RTC?

3 A I will say that Mr. Ryan is a very good  
4 listener.

5 Q It is my understanding that these were  
6 presentations that were arranged for Mr. Ryan?

7 A Yes.

8 Q Do you recall when they were?

9 A I really don't.

10 Q Did Mr. Stephens attend these  
11 presentations?

12 A No, he did not.

13 Q Was there any discussion as to whether he  
14 should attend these presentations?

15 A No, there never was.

16 Q And do you know what the purpose of the  
17 presentations were?

18 A The purpose of the presentations was to  
19 bring Mr. Ryan and Ms. Kulka up to date as to where  
20 we were in the investigation and where it appeared we  
21 were going.

22 Q Did you provide them with a preliminary --

1 preliminary results of your investigation?

2 A Orally, yes.

3 Q Did you provide them with any written  
4 materials?

5 A We did not, no.

6 Q Did the RTC?

7 A I don't know whether they did or not. But  
8 I don't think we were required to provide any written  
9 materials before that.

10 Q And these presentations would have been  
11 conducted by yourself and Mr. Ericson?

12 A Let's see. A couple of them were done by  
13 me without Bruce there. I think Harold Jordan of  
14 Jordan & Keyes was present for those.

15 Q And you indicated there were two --

16 A And I think Bruce made one or two  
17 presentations on Whitewater that I did not attend.

18 Q So your testimony is there were probably  
19 four presentations for Mr. Ryan?

20 A I would say three or four, although I am  
21 not certain.

22 Q And two would have been done by Mr. Ericson

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1 just on the Whitewater matter, and two by you on  
2 what, the general investigation?

3 A Two or three by me on the general  
4 investigation, where we were going overall. Just  
5 wasn't any sense at that point, in either of those  
6 two, for both Bruce and I to be present.

7 Q Did you ever have any discussions with  
8 anyone at the RTC about the fact that these reports  
9 that would be prepared by Pillsbury might become  
10 public?

11 A Yes.

12 Q What do you recall about those  
13 conversations?

14 A Well, number one, we were going to be  
15 absolutely certain that they didn't become public  
16 through us; in other words, we were not going to have  
17 any discussion with the press, nor did we have any  
18 discussion internally, inside the firm, about either  
19 the investigation or what we were doing or what  
20 results we were coming up with. And that those  
21 reports were going to be kept confidential, not only  
22 inside the firm but, by us, kept confidential to the



1 outside world, unless we were required to produce  
2 them either by Congress or by subpoena.

3 Q Was there any discussion about the  
4 consequences of the fact that the reports were likely  
5 to become public?

6 A I don't think so. I don't think we were  
7 concerned about the consequences of the reports  
8 becoming public.

9 Q Any discussion of the fact that you would  
10 need to be -- strike that.

11 Was there any discussion with the RTC about  
12 the fact that the conclusion that you would reach --  
13 i.e., that it wasn't cost-effective to bring civil  
14 litigation -- might be challenged or criticized by  
15 some quarters?

16 A Oh, no. I could -- we are doing an  
17 independent investigation and we are trying to  
18 determine, you know, a simple question with respect  
19 to whether there are sufficient -- how strong the  
20 liability case is, whether there are damages, whether  
21 those damages are recoverable. And all of those go  
22 into the thought of whether there's cost-effective

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1 litigation.

2 Beyond that point, if we did our job, I  
3 don't think it would particularly bother us if  
4 someone disagreed with what we did.

5 Q Did you have any communications about  
6 possible criticism with Mr. Ericson?

7 A No, I think we both felt the same way. As  
8 long as we did our job to the best of our abilities  
9 and delivered a report, or reports, that we felt we  
10 could stand behind, neither one of us were concerned  
11 about criticism.

12 Q What was the role of the RTC in connection  
13 with the preparation of the reports?

14 A We would submit drafts to the RTC. They  
15 would review them and make comments.

16 Q Did the RTC make substantive comments?

17 A With respect to the Castle Grande reports,  
18 I think the answer is no.

19 Q Do you have any understanding with regard  
20 to whether the RTC made any substantive comments on  
21 the other reports?

22 A I don't believe so. Bruce would be in a

1 better position than I am to tell you that.

2 Q Did you ever have any discussions with  
3 Mr. Ericson about the fact that certain persons --  
4 for example, Jim McDougal, Susan McDougal, Jim Guy  
5 Tucker, David Hale -- were not interviewed in  
6 connection with the preparation of your reports?

7 A Yes, because I was the one who was trying  
8 to interview all of them.

9 Q What do you recall about those discussions  
10 that you had with either Mr. -- with Mr. Ericson  
11 about the fact that you were unable to interview  
12 McDougal, Susan McDougal, Jim Guy Tucker, Latham,  
13 Hale, also Chris Wade?

14 A I did interview Chris Wade.

15 Q But you tried to conduct a second interview  
16 of Chris Wade; right?

17 A Right.

18 Q And the first interview of Chris Wade was  
19 not as complete as you would have wanted it to be;  
20 right?

21 A That's right; it was an initial interview  
22 early on.

1 Q What subjects did you cover with Mr. Wade  
2 in that interview?

3 A Chris Wade's residual amnesia.

4 Q Do you recall what subjects you would have  
5 discussed with Mr. Wade during the initial interview?

6 A Yes, we talked about 1308 Main Street and  
7 we talked about Whitewater.

8 Q Do you recall how long the interview took?

9 A I think we were there probably a couple of  
10 hours.

11 Q Would you describe this as a full interview  
12 on all subjects that Mr. Wade might have information  
13 about?

14 A No, I would not. I would describe it  
15 probably as preliminary, trying to find out what he  
16 knew or what he was willing to tell us he knew, and  
17 to what degree we could expect to get usable  
18 information from Chris Wade.

19 Q And what did you -- what judgment did you  
20 make after that interview?

21 A My conclusion was we were probably going to  
22 never get usable information from Mr. Wade.

1 Q Mr. Wade, when you subsequently tried to  
2 interview him again or depose him, asserted his Fifth  
3 Amendment right; correct?

4 A Yes, he indicated through his attorney that  
5 he was going to assert his Fifth Amendment rights and  
6 would not talk to us.

7 Q So going back to the question that was  
8 outstanding, did you have any discussions with  
9 Mr. Ericson about the fact that you were unable to --  
10 strike that.

11 Did you have any discussion with  
12 Mr. Ericson about the consequences of the fact that  
13 you were unable to interview or depose important  
14 witnesses including McDougal, Susan McDougal, Jim Guy  
15 Tucker, David Hale, and Mr. Wade?

16 A Yes, they would all be different with  
17 respect to each of the different ones; for instance,  
18 with respect to Jim McDougal, probably the same  
19 situation that you usually find yourself in in a  
20 civil case, and that is, that you haven't been able  
21 to interview the principal defendant that you are  
22 going to bring an action against.

1 But we had enough public statements from  
2 Jim McDougal, including some that had been made in my  
3 presence, about his role and the role of Jim Guy  
4 Tucker, that we had a fairly good idea of what  
5 McDougal might say. I underline the "might."

6 Q What public statements would Mr. McDougal  
7 have made in your presence?

8 A The public statement he made in my presence  
9 was in the dining room of the Capital Hotel in Little  
10 Rock.

11 Q Did you interview him there?

12 A No. He was being interviewed by a  
13 reporter, at a table next to mine.

14 Q Did he know you were sitting at the next  
15 table?

16 A I don't think he had any idea who I was.

17 Q Good investigative technique. Were you  
18 taking notes?

19 A It was absolutely pure luck, and yes, I was  
20 taking notes on the back of business cards.

21 MR. COLE: Do you recall who the reporter  
22 was who was interviewing Mr. McDougal?

1 THE WITNESS: I don't at this time, no. I  
2 think I probably have that name somewhere.

3 MR. COLE: Did that interview result in a  
4 published interview that you recall?

5 THE WITNESS: I don't recall that it did.  
6 What I do recall was that the content of the  
7 interview and the information that McDougal gave the  
8 reporter was almost exactly the same as the  
9 information that he had given Sheffield Nelson,  
10 S-h-e-f-f-i-e-l-d, N-e-l-s-o-n.

11 BY MR. GIUFFRA:

12 Q Let's turn to David Hale. Was there any  
13 discussion about the fact that you were not able to  
14 interview him?

15 A Yes. I mean, we certainly understood the  
16 Independent Counsel's position, that to allow us to  
17 interview Hale prior to his testifying or prior to  
18 their finishing with him could jeopardize their  
19 investigation and the trial of their case.

20 We continued to ask repeatedly that we get  
21 to interview David Hale and had hoped that we would  
22 be able to but we weren't. And he was -- we had some

1 questions that he would have tied up; for instance,  
2 it was an open question to us, whether there -- we  
3 knew there had been a meeting between McDougal, Hale  
4 and Tucker regarding Castle Sewer & Water and the  
5 Dean Paul loan. We believed there was a connection  
6 between Castle Sewer & Water, a subsidiary of that  
7 company called South Loop Construction, Jim Guy  
8 Tucker's purchase of 35 acres in Castle Grande, and  
9 the Dean Paul loan, and the loan subsequently made by  
10 David Hale's company to Castle Sewer & Water.

11 And we felt they all tied in. They  
12 appeared like they did, and what we needed was a  
13 witness to say that this had all been discussed by  
14 all of them and was all understood by all of them,  
15 because that would give us certainly a meeting and a  
16 conspiracy. We knew the meeting occurred. We just  
17 needed to know someone who would talk to us, what had  
18 happened.

19 Q So if you had David Hale's testimony, it  
20 might have made it easier to make a civil case?

21 A Well, I think now, knowing at least from  
22 the --



1 Q Press accounts?

2 A -- press accounts what David Hale testified  
3 to in the Jim Guy Tucker file, we were correct in our  
4 assumption of what he would tell us if we were able  
5 to talk to him.

6 MR. COLE: I'm sorry, Mr. Patterson, just  
7 so I am understanding you, are you saying that you  
8 had some assumptions as to what Mr. Hale would tell  
9 you had you been able to interview him, and that you  
10 wrote your reports accordingly; and those assumptions  
11 later were confirmed by public reports of Mr. Hale's  
12 testimony in the criminal trial?

13 THE WITNESS: No. In our report we left  
14 open the question of whether we would be able to  
15 prove that conspiracy through Hale. I think my  
16 belief and the belief of Goss and Mike Finnegan that  
17 worked with me was that if we got to Hale, we knew  
18 enough already that he would be able to tie it up and  
19 say yes, the subject was discussed; and yes, they  
20 were all tied together, and that Jim McDougal knew  
21 that, and that Jim Guy Tucker knew that.

22 BY MR. GIUFFRA:

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1 Q So that was a limitation in your analysis;  
2 correct?

3 A Yes. This just simply is that simple act  
4 of --

5 Q It is the missing piece?

6 A -- the coming together of the conspiracy,  
7 the single act in furtherance of the conspiracy, and  
8 the understanding of the parties to the conspiracy as  
9 to what the object is.

10 Q Are there any other witnesses you would  
11 have liked to talk to who you were not able to talk  
12 to that might have provided similar critical  
13 testimony?

14 A Probably, although I don't think we ever  
15 would have gotten anything out of them; would have  
16 been John Latham, although from everything I have  
17 seen from John Latham only -- in the first McDougal  
18 criminal trial, and his later testimony, everything  
19 we heard about him was probably correct, and that is  
20 that either John Latham didn't know anything or  
21 remembers nothing.

22 Q Any other witnesses?

1 A I think that's it. We would have liked to  
2 interview Susan McDougal, but I really have no idea  
3 what the extent of her knowledge would have been.

4 Q Anyone else?

5 A I think that's it.

6 Q Okay. Did you make efforts back in 1994 to  
7 obtain billing records from the Rose Law Firm  
8 concerning its representation of Madison?

9 A I don't recall when the first subpoena went  
10 to the Rose Law and I don't know what it called for.  
11 I think Bruce is more familiar with that.

12 MR. GIUFFRA: Let's go off the record for a  
13 second.

14 (Discussion off the record.)

15 MR. GIUFFRA: Let's go back on the record.

16 BY MR. GIUFFRA:

17 Q Mr. Patterson, now, in conducting an  
18 investigation, would you normally prefer to depose a  
19 witness as opposed to obtaining answers to  
20 interrogatories?

21 A Well, I think, yes.

22 Q And why would you rather depose a witness

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1 rather than rely upon responses to written  
2 interrogatories?

3 A Generally, interrogatories or responses to  
4 written interrogatories are prepared by counsel from  
5 information given to them by the witness. In a  
6 deposition, you get the witness's own words to  
7 questions you ask. Secondly, you are able to ask  
8 follow-up questions. And probably, finally, you are  
9 able to observe the witness and make some kind of  
10 judgments about how they would play as a witness in a  
11 trial.

12 Q Now, the analysis that the Pillsbury firm  
13 did was in connection with whether there would be  
14 cost-effective civil claims under the extender  
15 statute; right?

16 A Yes.

17 Q And you did not do any sort of analysis as  
18 to whether you could have brought a claim against any  
19 persons with regard to -- strike that.

20 You did not investigate whether it would  
21 have been possible to bring a claim against any  
22 person for gross negligence arising out of the

1 matters under investigation; right?

2 A No.

3 Q And you would not have done an analysis  
4 under a negligence theory; right?

5 A Well, I have to -- a little bit on the  
6 gross negligence question, there is -- the questions  
7 of the mental state required for gross negligence  
8 differs from state to state. I would have to go back  
9 and take a look at the analysis that we did as to  
10 whether Arkansas is one where we thought that we  
11 might be able to say that gross negligence was an  
12 intentional act. But it seems to me that, probably,  
13 we felt that was precluded by the extender statute.

14 Q And clearly you didn't look into whether  
15 you could have brought a claim under a negligence  
16 theory; right?

17 A No, we didn't. We didn't analyze that,  
18 although certainly we thought we could bring claims  
19 under a negligence theory.

20 Q Who might you have been able to bring  
21 claims against under a negligence theory?

22 A Probably against the board of directors of

1 Madison, that certainly may have been available.  
2 Although that also would have been included in claims  
3 like breach of fiduciary duty in which that is shown  
4 to be an intentional act, we could certainly, within  
5 the extender act or -- within the extender act, if it  
6 were a negligence act or negligence act probably  
7 outside of it.

8 Q Did you consider whether --

9 A But it would include a number of people  
10 that we -- that it would have been easier to make a  
11 case against. Other than the board of directors, I  
12 doubt that it would have extended the number of  
13 people that we originally looked at as defendants in  
14 the case.

15 Q How about the Rose Law Firm?

16 A I would have to go back and look at the  
17 Rose Law Firm report to determine whether we could or  
18 not, and I haven't reviewed it with that in mind.

19 Q And your analysis was in looking to whether  
20 there was any kind of criminal wrongdoing; right?

21 A No, our judgment was that that was a matter  
22 for the Office of Independent Counsel. Everything

1 that we had had been subpoenaed by them, and pursuant  
2 to that subpoena, we continued to supply material to  
3 them all the way up until the beginning of the trial  
4 against Jim Guy Tucker.

5 Q And your reports did not look into the  
6 question of whether any persons engaged in conduct  
7 that might be deemed unethical under some code of  
8 conduct applying to government officials?

9 A No.

10 Q Now, I want to read you a quote and tell me  
11 whether you would agree with the quote or not.  
12 Pillsbury Madison says in their report: "Let us  
13 spend no more time on this investigation. The  
14 Clintons are not guilty of anything." Close quote.  
15 Is that an accurate statement with regard to the  
16 Pillsbury investigation?

17 A I don't think we ever said that.

18 MR. COLE: Do you want to tell him who you  
19 are quoting?

20 MR. GIUFFRA: Not particularly.

21 MR. COLE: But you are not quoting -- it is  
22 not from a Pillsbury Madison report?

1 THE WITNESS: I don't remember a statement  
2 like that out of any of our reports.

3 BY MR. GIUFFRA:

4 Q No, that's a statement by a politician.

5 A I mean, that wasn't our job.

6 Q Your reports didn't conclude that the  
7 Clintons were not guilty of anything?

8 A We weren't there to exculpate or  
9 incriminate the Clintons.

10 Q And you didn't exculpate or incriminate the  
11 Clintons; right?

12 A We determined whether they would be  
13 defendants or could be defendants in a civil case.  
14 That would be it.

15 Q And you made the judgment that it wasn't  
16 cost-effective to bring civil litigation against the  
17 Clintons?

18 A We made the judgment, I think, that  
19 cost-effective in the sense that we found no evidence  
20 which led us to believe that we could probably make a  
21 case against the Clintons; and also, that if we ever  
22 had found that evidence, probably the amount of money



1 that involved was de minimis.

2 Q Now, did your report exonerate anyone?

3 A No. The intention of the report was not to  
4 exonerate or incriminate anybody.

5 Q It did not exonerate the Clintons?

6 A Again, that was not the intention of the  
7 report, to exonerate or incriminate anybody.

8 Q Just a couple of questions about the  
9 Whitewater report. Now, are you aware of the  
10 discussion in the Whitewater report in which there is  
11 a conclusion reached that you can't -- there was no  
12 evidence to show that the Clintons knew about the  
13 McDougals' advances of money to Whitewater?

14 A Yes.

15 MR. COLE: Do you want to give him a page  
16 reference just for the record, if you have a specific  
17 statement in mind?

18 BY MR. GIUFFRA:

19 Q This would be the December 13, 1995 report,  
20 pages 45 --

21 A December 13. Hang on one second.

22 Q Runs through about page 78, 45 to 77, 78.

1 A Page 78?

2 Q Yes.

3 A Okay, I have page 78.

4 Q Now, who asked you -- do you know who asked  
5 that this issue be examined?

6 A Which issue are you referring to? You have  
7 given me page 78.

8 Q Page 45 to 78, which is -- this is the  
9 question of whether the Clintons had knowledge of the  
10 fact that McDougal was funding the Whitewater  
11 investment.

12 A Oh, okay. It would have been part of what  
13 we looked into.

14 Q Now, in making the conclusion that there  
15 wasn't evidence that the Clintons had such knowledge,  
16 what was Pillsbury relying upon?

17 A We were relying essentially upon the fact  
18 that I had reviewed the reports -- and I will, if you  
19 want me to, review those pages to look at exactly  
20 what we were relying on.

21 But what we were relying on, at this point  
22 in time, was that there was certainly no documentary

1 evidence that indicated that they had any knowledge  
2 of what McDougal was doing with Madison funds. And  
3 if I recall, there was evidence or some evidence to  
4 the contrary that, at one point in time, McDougal had  
5 actually provided a letter to the Clintons that was  
6 misleading as to what he was doing.

7 Q Do you recall what letter that was?

8 A I think it was a letter that had to do with  
9 the fact that he was going to fold up or close down  
10 the Whitewater Development Company, and at the same  
11 time, he was making an investment in the name of  
12 Whitewater Development, I believe, in a property  
13 south of Castle Grande.

14 Q This is the International Paper  
15 transaction?

16 A Yes.

17 Q Now, in reaching the conclusion that the  
18 Clintons did not have knowledge, you were also  
19 relying on the Clintons' responses to the  
20 interrogatories; right?

21 A I believe so, yes.

22 Q In fact, that would have been the main

1 evidence that you were relying on in this portion of  
2 the report?

3 A That and the documentary evidence.

4 Q And in the report, on pages 71 through 76,  
5 there is a listing of a number of documents that were  
6 addressed to or written by the Clintons pertaining to  
7 Whitewater between 1978 and 1986. Do you recall  
8 those documents being listed?

9 A Yes. I see them.

10 Q Now, these documents reflect various  
11 transactions involving certain loans upon which the  
12 Clintons -- about which the Clintons were guarantors;  
13 correct, among other things?

14 A That's my understanding, yes.

15 Q Now, after February 20, 1982, the Clintons  
16 did not make any more payments to Whitewater; does  
17 that sound correct?

18 A I don't know that. I would have to review  
19 the report to answer that question.

20 Q Okay. Now, the Clintons were the  
21 guarantors on loans which were at least initially  
22 totaling about \$200,000; right?

1 A I don't recall the exact figure.

2 Q About 180, and then a \$20,000 down payment  
3 loan?

4 A I don't recall those figures.

5 Q The question obviously had to arise, how  
6 were the loans being paid off; correct, from the  
7 standpoint of the Clintons?

8 A I assume that it would, yes.

9 Q And in fact, you were aware that the  
10 Clintons, during the period, say, 1980 to '85, did  
11 not have a substantial net worth? By that I mean in  
12 excess of a million dollars.

13 A I would need the report to look at. I am  
14 not aware of that at this point in time.

15 Q Might it be better for me -- let me ask you  
16 a couple of more questions, then. I think the person  
17 I should direct these questions to is Mr. Ericson; is  
18 that right?

19 A Yes.

20 Q In drawing the conclusion that the Clintons  
21 did not have knowledge of how McDougal way paying off  
22 these loans, am I right that what Pillsbury does is

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1 it assumes from the absence of evidence that the  
2 Clintons did not have knowledge rather than drawing  
3 the inference the other way, which is that if you had  
4 a loan that you were guarantor on, you would at least  
5 ask questions or make inquiries about how the loan  
6 was being paid off?

7 A Well, that's speculation, and that's  
8 unsubstantiated. I mean, the only thing we have is  
9 an absence of evidence that they did have knowledge,  
10 and that's what we have to operate on.

11 Q Okay, so that's different than evidence  
12 that they did not have knowledge; right?

13 A Well, in the absence of any evidence they  
14 had knowledge, in the presence of their --

15 Q Denials?

16 A Denials in the form of interrogatory  
17 answers, and I think probably --

18 Q You would agree --

19 A -- at that point in time, what we had was  
20 the best evidence that we could see at this point in  
21 time would indicate that they did not have knowledge.

22 MR. COLE: Do you recall, Mr. Patterson,

1 whether there were letters to the Clintons from  
2 Mr. McDougal at various points in time indicating  
3 either that the cash flow from Whitewater was  
4 sufficient to service the debt or was expected to be  
5 sufficient to service the debt?

6 THE WITNESS: I would have to review the  
7 report again. That sounds familiar but I would have  
8 to look at the report to be sure of that.

9 MR. COLE: I don't know whether Mr. Giuffra  
10 intends to go through each of the documents and  
11 correspondence that are summarized in your report,  
12 but I would prefer to do that rather than have  
13 Mr. Giuffra summarize for the record his  
14 interpretation of the documentation that's set out in  
15 those 20-odd pages of your report.

16 THE WITNESS: The person who would be more  
17 familiar with that at this point in time than I am is  
18 going to be Bruce.

19 BY MR. GIUFFRA:

20 Q With regard to relying upon the Clintons'  
21 responses to the interrogatories, you will agree  
22 that, at least for this purpose, the Clintons were

1 potential defendants; right?

2 A In the consideration of this report, the  
3 Clintons were potential defendants or could be  
4 potential defendants, yes.

5 Q So one might view their interrogatory  
6 responses as somewhat self-serving; correct, in the  
7 ordinary case?

8 A Oh, I think you have to take them at face  
9 value. Whether they are self-serving or not, I don't  
10 think is a judgment you make. You take them at face  
11 value that they are a response of a defendant to a  
12 situation.

13 Q Did you look at all at the relationship  
14 between Governor Clinton and McDougal in terms of the  
15 possible granting of favors by the governor to  
16 McDougal?

17 A I think I was aware of what relationship  
18 Jim McDougal had had with Governor Clinton at the  
19 time of the investigation, yes, or at that time I was  
20 aware of it. I think I still am, as to his  
21 relationship with respect to the Clinton  
22 Administration in Arkansas.



1 Q For example, did you investigate whether  
2 there might be possible quid pro quos between  
3 McDougal's payments on Whitewater and favors done by  
4 Governor Clinton or his administration for McDougal?

5 A I believe we did.

6 Q Do you recall specifically looking into any  
7 such allegations?

8 A I am sure we heard a lot of them. We heard  
9 so many allegations and so much speculation during  
10 the course of this investigation, it would fill half  
11 a room, probably, with reports if we put all those  
12 down, which we tried to track down, we tried to  
13 follow up on, if it related to Madison Guaranty or  
14 Madison funds being used in any way.

15 Q In the Whitewater report, there is a  
16 conclusion that as much as \$134,000 might have been  
17 traceable to Madison Guaranty vis-a-vis Whitewater;  
18 do you recall that? It is a discussion on page 5 and  
19 6 of the supplemental report.

20 A Let me take a look at this real quick. I  
21 thought there was a -- they had come to the  
22 conclusion it was a figure somewhere in the

1 neighborhood of about 88,000, but maybe I am  
2 incorrect.

3 MR. COLE: Go off the record for a moment  
4 so the reporter can change her tape.

5 (Pause.)

6 BY MR. GIUFFRA:

7 Q Hello. Do you have it?

8 A Yes, I have it. Yes, I see the 134,294  
9 figure, and I see the figure we could trace was  
10 \$88,022.

11 Q And 30,000 of that was a bonus paid to  
12 McDougal in April '85; right?

13 Now, there is a discussion further down the  
14 page of about 39,474, which is -- these are payments  
15 of Whitewater debt where the payer is unknown?

16 A Yes.

17 Q And then you identify, I guess, a total of  
18 another 20,752; and then 25,520, where you just  
19 can't -- you don't know where the money comes from;  
20 is that right?

21 A No way to trace it.

22 Q And that adds up to a total of about

1 \$85,000, on the next page?

2 A Yes.

3 Q Now, on page 6 at the top, first full  
4 paragraph, it says, "of this, the evidence does not  
5 tie in 85,746 to Madison Guaranty"; do you see that?

6 A Yes.

7 Q And when you say "the evidence does not tie  
8 in," obviously that doesn't foreclose the possibility  
9 that there might be a connection between that 85,000  
10 and Whitewater; right? It is just on the evidence as  
11 it exists you weren't able to make that connection;  
12 right?

13 A On the evidence we had, there was no way we  
14 could trace this money back to Madison Guaranty.

15 Q You can't foreclose the possibility that  
16 those dollars would have been originally from Madison  
17 Guaranty; right?

18 A Well, until I have other information,  
19 that's all I can -- that's all I can live with, is  
20 the evidence I have.

21 Q You can't make a judgment one way or the  
22 other; right?

1 A No, we have the absence of connection. We  
2 cannot make a connection.

3 Q Let me see if I can try one more time.

4 You were missing a lot of documents, bank  
5 statements, checks, deposit slips; correct?

6 A Yes.

7 Q There was \$85,000 that ran through  
8 Whitewater that you couldn't trace because you didn't  
9 have the documents; right, to trace it?

10 A Well, in part, yes. And the other part was  
11 that some of the money came from accounts in which  
12 the money -- you know, you just couldn't trace a  
13 check for \$5000, for instance, going through one  
14 account and then coming out the other side, in which  
15 the account only had 5000. It might be a \$5000  
16 deposit to \$100,000 account, and then that \$100,000  
17 account paid out 5000 at some later time.

18 You don't know whether the funds were  
19 passed through that account from Madison Guaranty to  
20 Whitewater because there was sufficient money in the  
21 account to have met the check in any event.

22 Q But what I want to focus your attention to

1 is the statement in the first full paragraph on page  
2 6, where you say "the evidence does not tie in."

3 A That's right.

4 Q My question to you is, you can't foreclose  
5 the possibility that that \$85,000 was originally from  
6 Madison Guaranty; right?

7 A We can't foreclose that possibility, no.

8 Q You don't know because you don't have all  
9 the documentary evidence that would be necessary to  
10 foreclose that possibility; right?

11 A Yes. But also in some instances, and that  
12 is in those instances where checks were deposited in  
13 accounts in which there were large balances, there  
14 would be no way.

15 Q At any time?

16 A At any time, to ever trace that money  
17 back.

18 Q So, potentially, 173,768 might have come  
19 out of Madison Guaranty into Whitewater, but we have  
20 no way of knowing one way or the other whether that  
21 was the case; right?

22 A That would be speculation on my part.

1 MR. COLE: Are you aware of any evidence  
2 that would tend to indicate that, Mr. Patterson?

3 THE WITNESS: Would tend to indicate what?  
4 The money came from Madison?

5 MR. COLE: Yes.

6 THE WITNESS: No, I have no evidence of  
7 that either.

8 BY MR. GIUFFRA:

9 Q You would agree from your analysis that Jim  
10 McDougal transferred money in and out of Madison in  
11 ways that you can't now justify or explain; right?

12 A Jim McDougal was an extremely unusual and  
13 is an extremely unusual individual. He transferred  
14 money in and out of Madison for purposes that will  
15 probably forever be a mystery, not only to us, but  
16 probably to Jim McDougal.

17 Q And so my point is that Mr. McDougal --  
18 strike that.

19 Was Madison the primary source of funds for  
20 Mr. McDougal during this period?

21 A By Madison, are you referring to all the  
22 Madison entities?

1 Q Yes.

2 A I believe so. It appeared so.

3 Q So can't one make the inference that if  
4 there was money that was going into Whitewater at  
5 Mr. McDougal's direction that, at least initially,  
6 came from Madison or Madison entity? That's a fair  
7 inference, isn't it?

8 A Not necessarily, because I think he was in  
9 some partnerships with Jim Guy Tucker and Steven  
10 Smith in some properties, and I think he had some  
11 interest in some other real estate investments. I  
12 don't know where all of his money was coming from.

13 Q Did you ever attempt to ascertain whether  
14 some of the money that went into Whitewater could  
15 have come from those non-Madison-related investments?

16 A Yes.

17 Q And what were you able to conclude?

18 A I would have to look at the report again  
19 but I think that was looked at. I think there was  
20 money that came in from Flowerwood Farms, but I would  
21 have to look at the report again. Bruce would know  
22 that better than I would.

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1 Q Did the RTC have final sign-off  
2 authority -- strike that.

3 If the RTC officials had disagreed with the  
4 conclusions stated in your report, you obviously  
5 would have had to have changed those conclusions;  
6 they were the client?

7 A No.

8 Q And why is the answer no?

9 A The answer is no, because we were asked  
10 for -- we are an independent law firm and we were  
11 asked to perform an independent investigation. And I  
12 firmly believe that if the RTC had asked us to change  
13 our conclusions, the stated conclusion that they did  
14 not agree with, we would not have done that.

15 Q Was there any give-and-take between the RTC  
16 and Pillsbury as to any of the substantive  
17 conclusions in your report?

18 A I don't think they ever suggested to us  
19 that we change anything substantively in the report.  
20 Or any of the conclusions that will make those  
21 conclusions any different than they are, as they  
22 exist today.



1 Q How about tone or style?

2 A Style occasionally, some reports there were  
3 a number of comments; in others, there would not be.

4 Q Did you remove any discussions or add any  
5 discussions in the reports at the request of the RTC?

6 A I am not sure what you mean by "remove any  
7 discussions.

8 Q Delete discussions of various subjects at  
9 the request of the RTC.

10 A I can remember from a stylistic viewpoint  
11 deleting a description of the scenic aspects of a  
12 trip between Little Rock and Flippin, Arkansas, which  
13 was then in the initial Whitewater report. They  
14 asked that we remove that and I think I concurred in  
15 that.

16 MR. COLE: You liked that drive up highway  
17 65 north.

18 THE WITNESS: I think it was Bruce that put  
19 the description in there. I can recall that -- I can  
20 remember numerous comments they would make with  
21 respect to style and we would not -- we would not  
22 change it because we were -- just because we didn't

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1 agree with it, or there would be changes, for  
2 instance, they may suggest a whole shift in tense in  
3 the report which didn't do anything, we thought, to  
4 affect anything that we were trying to convey and we  
5 would make that kind of changes.

6 Q The total cost of your report was what,  
7 including fees paid to Tucker Alan and your  
8 disbursements, was a little under 4 million?

9 A I believe so. I would have to look at --  
10 if you have the billing reports in there and that's  
11 what it indicates, expenses and -- Tucker Alan's  
12 fees, and that would be for all of the investigation,  
13 including all of the reports.

14 Q Did you ever have any discussion with  
15 anyone at the RTC that the fees being paid to your  
16 firm were near the amount of the highest possible  
17 recoverable damages that the RTC might obtain?

18 A I don't recall having that discussion, no.

19 Q Did you ever have that discussion  
20 internally at Pillsbury?

21 A Certainly I imagine that we discussed the  
22 amount of the fees, but for some of the reports, as I

1 have said, those reports were going to be done and  
2 investigations done, regardless of whether we were  
3 going to recover anything like Whitewater.

4 Q And that was just a judgment that the RTC  
5 was making?

6 A Yes, that it had to be investigated and it  
7 had to be investigated thoroughly.

8 Q Because of the fact that there had been  
9 criticism of the way the RTC had handled this matter  
10 in the past?

11 A I don't know that that's true. I just know  
12 they wanted to have it done so that they could rest  
13 assured that they had done what they could do to  
14 investigate it completely.

15 Q Do you recall any discussions with anyone  
16 at the RTC about criticism of the RTC's handling of  
17 RTC's criminal referrals relating to Madison or the  
18 prior civil investigation of Madison?

19 A I remember certainly -- I don't know  
20 whether they call it criticism, but the publicity  
21 that surrounded the question of criminal referrals by  
22 Jean Lewis.

1 Q Do you recall discussing that with anyone  
2 at the RTC, that criticism?

3 A I am sure there must have been -- there was  
4 discussion of Jean Lewis and the investigations in  
5 Kansas City.

6 Q Did anyone say anything to you about Jean  
7 Lewis at the RTC?

8 A No. I mean personally about her?

9 Q Or about the competence of Jean Lewis or  
10 quality of her work.

11 A No. As a matter of fact, we worked with  
12 Jean Lewis and with several other people in the  
13 investigations division in Kansas City when we did  
14 our investigations in Arkansas.

15 Q Did you work with Jean Lewis?

16 A Yes, I talked to her on the telephone on  
17 the occasion of -- initially with us down there was a  
18 gentleman by the name of Jerry Davidson who was with  
19 investigations out of Kansas City who assisted us by  
20 attending all interviews so we would have an  
21 independent person there, other than ourselves,  
22 taking notes at the interviews.

1 Q Was Ms. Lewis helpful to your  
2 investigation?

3 A In the contacts I had with her, yes, I have  
4 to say that she was.

5 Q Why was Ms. Lewis helpful to you in the  
6 contact you had with her?

7 A She was able to direct us to certain  
8 documents much faster than I think we would have  
9 found them otherwise, the documents that were in  
10 Kansas City. If we were about to talk to a witness  
11 or if some subject came up, we could call her, and  
12 she could give us information.

13 Q Did she appear to you to be knowledgeable  
14 about the matters that were under investigation  
15 concerning Madison Guaranty?

16 A Knowledgeable, yes, in the sense that I  
17 think she understood what the documents were and  
18 where they were and could lay her hands on them. She  
19 certainly understood what went into the failure of  
20 Madison Guaranty.

21 Q Did you ever review any of Ms. Lewis's  
22 criminal referrals relating to Madison Guaranty?

1 A Yes, I did.

2 Q Were Ms. Lewis's referrals at all helpful  
3 to you in the conduct of your investigation?

4 A They were.

5 Q And why were Ms. Lewis's referrals helpful  
6 to you in the conduct of your investigation?

7 A Because they pointed us in directions that  
8 we could look to see what we could find out.

9 MR. COLE: Did your investigation confirm  
10 the allegations that were set forth in Mrs. Lewis's  
11 criminal referrals, Mr. Patterson?

12 THE WITNESS: All of them?

13 MR. COLE: Let's focus on the 1992  
14 referral, which you may recall was the referral that  
15 alleged the check kiting activity involving, among  
16 other McDougal-controlled entities, Whitewater  
17 Development Corporation? Do you recall that  
18 referral?

19 THE WITNESS: We did not find any kind of  
20 an over-arching check kiting scheme.

21 MR. COLE: Am I correct in understanding  
22 that you were looking for evidence of civil fraud or

1 a conspiracy to commit a civil fraud?

2 THE WITNESS: Well, a check kite could be  
3 either -- could be civil and criminal in terms of  
4 being fraud.

5 MR. COLE: That's what I am getting at.  
6 But the standard -- the burden of proof is higher to  
7 sustain a criminal charge of check kiting than to  
8 sustain a civil fraud charge, is it not?

9 THE WITNESS: That's true, but if I am  
10 going to go in with a civil case, I sure as hell  
11 would rather have it beyond a reasonable doubt than  
12 just a simple preponderance of the evidence.

13 MR. COLE: I understand that. The  
14 distinction I am making is a simple one. It would be  
15 possible to have evidence that would establish a  
16 civil fraud of check kiting, and that same evidence  
17 would not perhaps support the burden of proof of  
18 beyond a reasonable doubt of a criminal check kiting  
19 charge; correct?

20 THE WITNESS: That's correct, but we  
21 couldn't even find evidence that would support a  
22 civil claim.

1 MR. COLE: That's the distinction I am  
2 making, the distinction does not go the other way.  
3 If you had proof beyond a reasonable doubt that would  
4 satisfy a criminal charge that, a fortiori, you would  
5 have civil evidence to support a civil claim.

6 THE WITNESS: I think in a check kite type  
7 of fraud, that would probably be true.

8 MR. COLE: You didn't find anything that  
9 would support this kind of over-arching check kiting  
10 scheme?

11 THE WITNESS: We did not.

12 BY MR. GIUFFRA:

13 Q When you say you didn't find anything, did  
14 you find any evidence of a possible check kite  
15 scheme?

16 A No, not in the classic check kite type  
17 situation. What we were looking for was was there a  
18 pattern in what McDougal was doing in his transfer of  
19 money among these various entities that, you know,  
20 would amount to some scheme that appeared to be a  
21 check kite; in other words, constantly putting money  
22 into one account in order to write checks off of it



1 which were based on checks that were really overdrawn  
2 in another account, that kind of juggling operation.

3 Q Did you find any instance --

4 MR. COLE: Had you finished your answer to  
5 his question, Mr. Patterson? I think you were cut  
6 off.

7 Let's go off the record.

8 (Discussion off the record.)

9 MR. GIUFFRA: Let's go back on the record.

10 What was the last question and answer?

11 (The reporter read the record as requested.)

12 BY MR. GIUFFRA:

13 Q Here is my question. Did you find any  
14 instance in which Mr. McDougal had engaged in check  
15 kiting?

16 A No, I don't believe so. Bruce could  
17 probably tell you that more specifically, but I don't  
18 believe so.

19 MR. COLE: So Mr. Patterson, to the extent  
20 that the criminal referral that Jean Lewis prepared  
21 in 1992 alleged a check kiting scheme, your  
22 investigation did not find evidence to sustain that

1 allegation?

2 THE WITNESS: That's right.

3 BY MR. GIUFFRA:

4 Q But your investigation was assisted by  
5 Ms. Lewis's referral in 1992; right?

6 A But it was in the sense that we had the  
7 referrals before us.

8 Q And Mr. Cole's questions focused on one  
9 criminal referral. Did you review all 10 criminal  
10 referrals?

11 A I believe we did, yes.

12 Q Did you make any judgments as to whether  
13 there was evidence to support the allegations  
14 contained in the other nine criminal referrals?

15 A In a criminal sense, no. In a civil sense,  
16 if they related to the use of Madison Guaranty funds,  
17 we probably would have looked at them and made --  
18 probably not made a determination as to whether the  
19 referral was supported by the evidence or not, but  
20 whether the general subject matter, whether we could  
21 find evidence that supported that, in order to bring  
22 a civil case.

1 Q But do you recall what kind of conclusion  
2 you might have made with regard to those other nine  
3 referrals?

4 A I would have to go back and review each one  
5 of them.

6 Q In her dealings with you, was Jean Lewis  
7 professional?

8 A Yes.

9 Q Did she seem in any way, to you at least,  
10 to be someone who had ulterior motives in her  
11 activities with regard to Madison?

12 A I don't think I had any way to make that  
13 determination.

14 Q But did she make any adverse statements  
15 about the Clintons, or about -- during the course of  
16 any of your conversations?

17 A Not to me, no.

18 Q So she always seemed to be a dispassionate  
19 investigator, at least as far as you know?

20 A Well, it was always business.

21 Q When you say "it was always business," what  
22 do you mean by that?

1 A I mean when I talked to her, it would have  
2 been dealing solely with what documents do we have  
3 that would support this, or what information have you  
4 gathered that would indicate A or B.

5 Q Did other members of your firm, including  
6 associates, have dealings with Ms. Lewis?

7 A Yes.

8 Q And what was their -- do you have any  
9 understanding as to what their experience was with  
10 regard to Ms. Lewis?

11 A Again, it would have been a professional  
12 relationship. I have no indication from anyone of  
13 anything other than cooperation by her.

14 MR. COLE: Mr. Patterson, you indicated  
15 that Ms. Lewis was helpful in locating documents and  
16 obtaining background information for witness  
17 interviews, if I understood your answer correctly.  
18 Do you have a professional opinion as to the quality  
19 of the analysis in the criminal referrals that  
20 Ms. Lewis submitted?

21 THE WITNESS: I don't believe that I do. I  
22 mean I looked at them and I have always looked at

1 them as simply being referrals, and that is somebody  
2 saying here is something that looks like it could  
3 bear some investigation.

4 MR. COLE: But to the extent --

5 MR. GIUFFRA: Are you finished with your  
6 answer?

7 THE WITNESS: Yes.

8 MR. COLE: But to the extent that those  
9 referrals set out facts and then draw conclusions or  
10 inferences based upon those facts, did your review of  
11 those referrals confirm those conclusions and  
12 inferences?

13 THE WITNESS: Again, I would have to give  
14 you the same answer I gave you before. I didn't  
15 review them in order to confirm or deny what was in  
16 them. I looked at them as somebody saying here is a  
17 possible situation which may exist, you ought to  
18 investigate it.

19 BY MR. GIUFFRA:

20 Q Your investigation was not intended to  
21 evaluate the quality of Ms. Lewis's referrals; right?

22 A No, it wasn't.

1 Q You would be uncomfortable making a  
2 judgment as to the quality of her referrals; right?

3 A I don't think I could. Again, I looked at  
4 them as only being referrals, as someone sending  
5 something to the U.S. Attorney and saying here is  
6 something I think you ought to look into. I mean,  
7 that's how I took them.

8 Q Just a few more questions.

9 Did you do any analysis based on looking at  
10 this in terms of possible recklessness claims?

11 A Yes.

12 Q And what conclusions did you reach?

13 A Because we were trying to determine whether  
14 we could -- whether recklessness would amount to  
15 intentional misconduct.

16 Q And what conclusion did you reach?

17 A The conclusion I think that we reached was  
18 that, under Arkansas law, it probably would not -- we  
19 would not be able to do that.

20 Q Do you recall --

21 A There are certain jurisdictions, I believe,  
22 where it could amount to intentional misconduct.

1 Q Did you have any discussions with  
2 Mr. Ericson about possible claims against the Rose  
3 Law Firm arising from Castle Grande?

4 A Outside of reviewing the report, no.

5 Q About how long did you speak to Mr. Ericson  
6 when you discussed your review of the report, that's  
7 the Rose report?

8 A We would have probably talked about it on  
9 several occasions.

10 Q Did you have any discussion with him about  
11 what the responsibilities might have been of a lawyer  
12 at the closing of a sale of real estate transaction?

13 A I don't recall having that discussion with  
14 him, no.

15 Q Did you have any discussions with him about  
16 whether Mrs. Clinton or Mr. Hubbell drafted the  
17 so-called September 24, 1985 letter?

18 A I vaguely recall discussions about that  
19 subject. I don't think we could ever conclude that  
20 either one of the two of them had.

21 Q Do you recall anything more about the  
22 substance of those discussions?

1 A No, I don't. Other than that, I think that  
2 was a subject he planned to cover with Mrs. Clinton  
3 in his interview.

4 Q Now, the final report is dated February 26,  
5 1996, that's the supplemental Rose report; are you  
6 aware of that?

7 A I have one dated February 25, 1996.

8 Q 25, excuse me, I apologize. Did you ever  
9 have any discussions with Mr. Ericson about the need  
10 to obtain a tolling agreement with the Rose Law Firm?

11 A I have some recollection, and it is a very  
12 vague recollection, that I did, but I can't recall  
13 what the discussion was.

14 Q Did Mr. Ericson ever say to you that he had  
15 a tolling agreement until May of 1996?

16 A I don't recall that specific discussion.  
17 We may have had it, but I don't recall it.

18 Q Did you ever have any discussions with the  
19 RTC about whether you had sufficient time to conclude  
20 your investigation?

21 A As regards which portion of the  
22 investigation?



1 Q Any portion -- why don't I break it up.  
2 I would assume that initially, back in  
3 January of 1994, you probably had conversations with  
4 the RTC in which you said you probably didn't have  
5 enough time to get everything done in this month;  
6 right?

7 A Oh, yes.

8 Q Before you got the extension of statute of  
9 limitations, did you have discussions with the RTC  
10 about whether it would be possible to conclude your  
11 query in sufficient time -- strike that.

12 After the extender statute was enacted, did  
13 you have any discussions with the RTC in which you  
14 indicated that you might not have sufficient time to  
15 complete your investigation by a deadline; for  
16 example, a limitations deadline?

17 A Of course we would be looking at January  
18 31, you know, under the extender statute.

19 Q That's '95; right?

20 A '95. And I think we felt we could --

21 Q Actually '96. I think we both misspoke.  
22 '96, isn't it?

1 A I'm sorry, January 1, 1996. December 31,  
2 1995.

3 Q Yes, year end. Did you have any  
4 discussions about the fact that you might not be able  
5 to complete your inquiry by year end '95?

6 A No. And in fact, with respect to Castle  
7 Grande, our target, 1308 -- Campobello, as far as our  
8 initial look at it, our target was to complete that  
9 by June 30, 1994.

10 Q Do you know why Mrs. Clinton was not  
11 interviewed by the Pillsbury firm until February  
12 1996?

13 A No, I don't.

14 Q Do you ever have any discussions with David  
15 Kendall?

16 A Yes.

17 Q What discussions did you have with David  
18 Kendall?

19 A The discussion was with David; Mark  
20 Gabrellian and I went to see David in his office to  
21 discuss a subpoena to the Clintons.

22 Q And when would that have been?

1 A Oh, gosh, I don't remember.

2 Q This would have been early in '94?

3 A I think so, yes.

4 Q And do you recall anything further about  
5 that? Do you recall what that discussion was about  
6 other than the subpoena?

7 A No. And that was the only subject.

8 Q And that would be whether he would accept  
9 service of the subpoena and the scope of the  
10 subpoena?

11 A It was also that and explaining to him the  
12 regulations that applied to information produced to  
13 the RTC.

14 Q In terms of confidentiality?

15 A That if requested, et cetera.

16 Q Did you have any other subsequent  
17 conversations with Mr. Kendall?

18 A Yes. Certainly a discussion with  
19 respect -- I remember discussions with respect to an  
20 extension of time in order to produce documents, I  
21 remember a discussion regarding extensions of time in  
22 which to answer interrogatories.

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1 Q Do you recall any other discussions?

2 A No.

3 Q Did you ever have any discussion with  
4 anyone at the White House?

5 A No. During this administration?

6 Q What was your understanding of Jordan &  
7 Keyes's role in connection with this project?

8 A Jordan & Keyes was to look at -- they took  
9 over the examination or evaluation of the question of  
10 whether there was an over-arching fraud or an  
11 over-arching check -- I mean, some kind of master  
12 plan of the use of Madison Guaranty.

13 They took over the investigation and the  
14 responsibility for writing the report on Campobello.  
15 And they performed the investigations on all of the  
16 other real estate projects, like Maple Creek,  
17 et cetera.

18 Q Who made the judgment that Jordan & Keyes  
19 should take responsibility for these non-Castle  
20 Grande/1308/Whitewater projects?

21 A I think that was -- my guess would be  
22 ultimately the RTC. Certainly I think it was done in

1 conjunction of discussions with Harold Jordan, myself  
2 and Mark Gabrellian, and maybe Bruce.

3 Q Do you recall anything more about those  
4 discussions as to why these projects would be handled  
5 by Jordan & Keyes?

6 A I don't -- my best recollection was at that  
7 point in time, we had already embarked on  
8 investigating 1308 and Castle Grande, and had already  
9 started the process for obtaining Whitewater  
10 documents. And it seemed the logical point for  
11 Jordan & Keyes to pick up would be to pick up the  
12 Campobello investigation, and also to handle the  
13 investigation of the other real estate projects, and  
14 the question of whether there was some sort of master  
15 plan for fraud.

16 Q Do you know why Jordan & Keyes was brought  
17 in, though?

18 A Do I know why that firm, Jordan & Keyes,  
19 was chosen? No.

20 Q Do you know why they were brought in in the  
21 first place and the project was not -- all aspects  
22 handled by Pillsbury?

1 A My understanding is, as a part of its  
2 policy and practice, the RTC required that, I think,  
3 what they were called sometime was MWOLF, minority or  
4 woman owned law firms, should be associated with  
5 another law firm which was not MWOLF in any kind of  
6 project like this.

7 Q There were no other reasons why Jordan &  
8 Keyes were brought in; am I right about that?

9 A Yes, you are.

10 Q Didn't have anything to do with the fact  
11 that maybe their fees were lower than yours?

12 A I don't know whether it did, but I don't  
13 think so.

14 Q You would agree that the -- strike that.

15 Did you identify missing Whitewater  
16 documents? That's a bad question, let me strike  
17 that.

18 Did you find that -- did you identify or  
19 obtain a complete set of Whitewater documents, or did  
20 you think there were missing documents?

21 A I think from an accounting standpoint,  
22 there were documents that probably could have been

1 helpful, as you've earlier indicated, in the report.  
2 I mean, that may have made the difference between  
3 88,000 and 134,000.

4 Q And those documents were missing?

5 A My understanding is yes, they were.

6 Q And with regard to Madison, did you  
7 similarly find that there were documents that you  
8 would have liked to have had that were missing or not  
9 produced?

10 A I don't think we ever had any suspicion  
11 that there was something in existence that hadn't  
12 been produced.

13 Q Did you have suspicions along those lines  
14 with regard to Whitewater?

15 A No.

16 Q Did you believe that there were documents  
17 that were perhaps no longer in existence with regard  
18 to Whitewater that you would have liked to have had?

19 A Probably Bruce would be the better one to  
20 inquire of as to that. The only one that comes to  
21 mind, or the one that come to mind with respect to  
22 me, are accounting documents relating to items in

1 excess of \$88,000.

2 Q So the inflows into Whitewater?

3 A Yes.

4 Q Now, same question with regard to Madison.  
5 Were there documents that appeared to no longer be in  
6 existence that you would have liked to have had?

7 A I don't believe so. I think we probably  
8 satisfied ourselves that many of the documents that  
9 we thought should be there were just never prepared.

10 Q Did you make any judgments about  
11 recordkeeping at Madison?

12 A Well, recordkeeping was generally sloppy;  
13 for instance, you might find a bill for an appraisal  
14 in the files with no appraisal. There never was an  
15 appraisal prepared. There didn't seem to be any  
16 systematic and intelligent redaction of files or  
17 looting of the files in order to keep items out of  
18 our hands. I mean by that time, all of the documents  
19 had been in the hands of the RTC for a considerable  
20 period of time.

21 Q Did you talk to a federal bank examiner by  
22 the name of Jim Clark?



1 A I did not.

2 Q Did anybody from your firm?

3 A If he was talked to, my guess would be it  
4 would be Bruce.

5 Q Do you recall reading or reviewing an  
6 examination report prepare by Mr. Clark?

7 A Which examination, '84?

8 Q Probably it would be the '86 exam.

9 A '86 exam, I probably looked at portions of  
10 it, yes.

11 Q Did you draw any conclusions as to --  
12 strike that.

13 In that report, there was discussion of the  
14 fact that Mr. Clark made the judgment that the Castle  
15 Grande transaction was structured in a fraudulent  
16 manner. Do you recall that?

17 A No, I don't recall it. But if that's what  
18 he said --

19 Q Did you draw any conclusion as to how you  
20 thought the Castle Grande transaction was structured?

21 A Yes, we did.

22 Q What was that conclusion?

1 A I think we concluded in the report that we  
2 thought that we had a situation in which the evidence  
3 could either be read, that Seth Ward was induced by  
4 certain payments to act as a straw man in buying the  
5 major portion of Castle Grande in order to avoid the  
6 6 percent limitation on investment imposed by  
7 Arkansas regulations on Madison Guaranty, but that  
8 Mr. Ward's story, on the other hand, was that, if  
9 Madison hadn't bought the property, he probably would  
10 have, since it would be buying it for less than the  
11 debt, \$1,750,000; he would be buying it for less than  
12 the debt that was existing against it. And that the  
13 reason he agreed to buy a portion of it was that he  
14 felt he was completely protected from any loss, and  
15 that he was going to make money on the deal.

16 Q Of course, Mr. Ward also received fairly  
17 extensive -- fairly large commissions for sales that  
18 he really had nothing to do with; isn't that right?

19 A That's correct, but I think that, if I  
20 recall the original agreement, it didn't require him  
21 to have anything to do with the sales.

22 Q Just one last question. In terms of the

1 documents, do you believe that your inquiry was in  
2 any way hindered by the fact that recordkeeping was  
3 so poor at Madison Guaranty?

4 A I don't think that it would have changed  
5 our conclusions, no, had we had everything that those  
6 missing items had.

7 Q Why do you say that?

8 A Because there were not enough of them nor  
9 were they significant enough that it would change our  
10 conclusions.

11 Q Well, for example, with regard to  
12 Whitewater, if you had been able to trace the  
13 additional documents, it might have made a  
14 difference -- the additional funds, it might have  
15 made at least some difference; right?

16 A 134,000 as opposed to 88,000.

17 Q That's the problem with regard to  
18 cost-effectiveness?

19 A From a cost-effectiveness standpoint, it  
20 still would not have made much difference to us.

21 Q What would you have needed, you think, to  
22 have it be cost-effective in terms of the amount of

1 money that would have been at issue in the Whitewater  
2 aspect of this?

3 A Well, in terms of the amount of money, we  
4 would have need something more in terms of liability.

5 Q But how much more do you think you would  
6 have needed?

7 A Oh, I don't know.

8 Q Half a million dollars?

9 A The answer to that is you could have \$10  
10 million in Whitewater but if you didn't have anybody  
11 that could respond in any way to a judgment, you were  
12 out of luck. McDougal was bankrupt. Chris Wade was  
13 about to take bankruptcy. And we did not have  
14 evidence that would enable us to bring a case against  
15 the Clintons.

16 MR. COLE: When you say you did not have  
17 evidence that would enable to you bring a case  
18 against the Clintons, you are, I take it, referring  
19 to the portions of your report that indicate that the  
20 Clintons did not play an active role in the  
21 management of Whitewater, at least up until about  
22 1988?

1 THE WITNESS: That's right.

2 BY MR. GIUFFRA:

3 Q Now, with regard to the conclusion that the  
4 Clintons did not have knowledge with regard to the  
5 management of Whitewater prior to '88, you were  
6 relying upon documents we've already covered, this  
7 and Clinton's interrogatories; right; correct?

8 A Yes, I think you would probably have to  
9 talk to Bruce to get a whole picture of what --

10 Q Don't you think obtaining the testimony of  
11 Mr. McDougal and Mrs. McDougal and Chris Wade on this  
12 subject might have been illuminating?

13 A Chris Wade's testimony on this question was  
14 not illuminating at all. We did ask him about  
15 Whitewater.

16 Q What did he say?

17 A He remembered almost nothing. He had  
18 little if any involvement in it, other than as a real  
19 estate agent, and he claimed that his dealings were  
20 exclusively with Jim McDougal, if I remember his  
21 testimony correctly.

22 MR. COLE: So you did ask Mr. Wade about

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1 the role, if any, of the Clintons in Whitewater that  
2 he was aware of?

3 THE WITNESS: Yes.

4 BY MR. GIUFFRA:

5 Q What did he say?

6 A He said the same thing that he said to the  
7 newspapers several times before.

8 Q Which was what?

9 A He had not had contact with the Clintons.

10 Q He couldn't tell you one way or another the  
11 person you would have to talk to was McDougal?

12 A Yes.

13 Q You were not able to talk to McDougal?

14 A No, we were not.

15 Q You were not able to put the question to  
16 McDougal about what the Clintons knew about the  
17 funding of Whitewater between '78 and '88?

18 A No, we were not able to.

19 Q And that obviously would be a critical  
20 piece of information in order to round out your  
21 report; right?

22 A Well, assuming that he would say something

1 different than what we have heard in his public  
2 reports, yes. Because I haven't heard anything, I  
3 don't believe, in public reports as statements by Jim  
4 McDougal that indicated that the Clintons knew  
5 anything.

6 Q But obviously if you deposed McDougal, you  
7 would put letters in front of him and ask him  
8 questions and see whether that refreshed his  
9 recollection in a way that a newspaper reporter would  
10 not; right?

11 A Obviously you could do that, yes.

12 Q And you would agree that the kind of  
13 inquiry that you would conduct as a lawyer would be  
14 more probing than the kind of inquiry that a  
15 newspaper reporter would conduct while having lunch  
16 with Mr. McDougal at the Capital Hotel in Arkansas;  
17 right?

18 A The problem is that Mr. McDougal, having  
19 lunch bought for him at the Capital Hotel in Little  
20 Rock, may be more willing to tell the reporter what  
21 he knows than he would be me, under a probing  
22 examination.

1 MR. GIUFFRA: Off the record.

2 (Discussion off the record.)

3 MR. GIUFFRA: Back on the record.

4 BY MR. GIUFFRA:

5 Q But you will agree a lawyer asking  
6 Mr. McDougal questions at a deposition and producing  
7 documents for Mr. McDougal to examine might obtain  
8 evidence that a newspaper reporter might not obtain;  
9 correct?

10 A That would be pure speculation on my part.  
11 I really can't answer that.

12 Q In your professional judgment, do you  
13 normally rely upon accounts of what witnesses say to  
14 newspaper reporters in litigating cases?

15 A When it relates to a defendant in a civil  
16 case, that's probably more than we ever see in  
17 advance of the case.

18 Q Well, in a civil case, normally you can  
19 depose the defendant prior to trial; correct?

20 A But only after we file a lawsuit. Here is  
21 a situation where we are able to get information from  
22 people, and we have information, not only publicly



1 but through things like the statement given to  
2 Sheffield Nelson.

3 Q But obviously a statement made to a  
4 newspaper reporter is not under oath?

5 A Obviously, yes.

6 Q So that's a limitation on relying upon a  
7 newspaper account of what someone says; right?

8 A You don't rely on newspaper accounts, but  
9 you do look to see if there is anything consistent  
10 with the reports that you see.

11 MR. GIUFFRA: Lance, I don't have any  
12 further questions. Do you have any?

13 MR. COLE: I have a few follow-up  
14 questions. I realize we have had you on the  
15 telephone for a long time, Mr. Patterson.

16 THE WITNESS: I will take a deposition for  
17 myself in about 10 minutes.

18 MR. COLE: I will try to finish myself in  
19 10 minutes.

20 MR. GIUFFRA: You are a hard worker, sir.

21 EXAMINATION

22 BY MR. COLE:

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1 Q You made several references in your  
2 testimony to an investigation your firm conducted as  
3 to whether there existed what you referred to as an  
4 over-arching check kiting scheme at Madison Guaranty  
5 Savings & Loan?

6 A Yes.

7 Q And my question to you is did that  
8 investigation -- was that one of the primary areas of  
9 potential claims that you pursued in your  
10 investigation initially?

11 A Initially, yes. And I think that  
12 investigation then passed to Jordan & Keyes, but the  
13 accountants, as I recall, at the conclusion, they  
14 could find no check kiting, number one; and secondly,  
15 no evidence of any kind of an overall scheme.

16 Q And the idea to investigate whether or not  
17 there was an overall check kiting scheme, was that  
18 something you were directed to do by the RTC, or was  
19 that something that you, your firm itself, proposed  
20 to do?

21 A It was certainly one of those things that  
22 you look into when you have a savings and loan, and

1 we had had, certainly, experience in investigating  
2 failures of savings and loans, was there some kind of  
3 an overall scheme to use the money of the savings and  
4 loan to accomplish purposes other than legitimate  
5 purposes for the use of that money. So anytime you  
6 go into it, you want to look at all of the  
7 transactions and see if they interrelate.

8 In addition, at the time we were looking at  
9 this speculation in the press, there were criminal  
10 referrals by -- this had been put forward by Jean  
11 Lewis, that speculated about what was going on in  
12 Madison, how was this being used, was money being  
13 diverted for political uses; as I said, at one time,  
14 even was it being diverted for drug laundering  
15 operations.

16 So all of those things dictated that, in  
17 order for us to do our job, we should at least see if  
18 there is enough initial evidence of that to warrant  
19 or justify an investigation.

20 Q And did the RTC specifically ask that you  
21 investigate check kiting?

22 A They agreed that we should look into that

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1 subject, yes.

2 Q And was the purpose of your looking into  
3 that subject to investigate the allegations that were  
4 in the criminal referrals that had been submitted on  
5 Madison Guaranty Savings & Loan?

6 A I don't think that they were ever  
7 connected, no. Certainly there was a criminal  
8 referral that related to that, and that was, of  
9 course, something else that militated in favor of  
10 doing it, because here is someone else outside the  
11 press who is saying gee, there may be something  
12 here.

13 Q So that was one purpose of what you were  
14 investigating, was to make sure that that base was  
15 covered, so to speak?

16 A Sure.

17 Q And I am not going to go over what you  
18 already testified to, other than just to summarize  
19 that you found no evidence of that kind of check  
20 kiting scheme, overall check kiting scheme?

21 A No, we did not.

22 Q Now, in terms of the role of Mr. Stephens

1 in this engagement, am I correct in understanding  
2 that, up until the passage of the extender statute,  
3 you and Mr. Stephens and Mr. Ericson and others in  
4 your firm were all working very hard to gather as  
5 much information as you could in a short period of  
6 time?

7 A Yes, that's correct.

8 MR. GIUFFRA: That's in the January,  
9 February period in '94?

10 THE WITNESS: Yes, pretty much.

11 MR. GIUFFRA: February really.

12 THE WITNESS: February, yes.

13 BY MR. COLE:

14 Q Was it after the passage of the extender  
15 statute that you had the discussion that you  
16 described earlier with Mr. Gabrellian, regarding the  
17 staffing of the matter going forward?

18 A Yes, at that time we had the kind of  
19 breathing room to be able to sit down and look at  
20 staffing, certainly would not have been efficient for  
21 us to continue with the amount of people that we had  
22 working on this matter, now that we had time to do

1 it. It was better to put it in the hands of fewer  
2 people in order to get the job done, at the least  
3 cost.

4 Q And that was the time that you divided the  
5 principal investigative areas between yourself and  
6 Mr. Ericson in the manner that you described earlier  
7 in your deposition?

8 A Yes, it was.

9 Q And was that a determination that was made  
10 internally at your firm and then presented to the RTC  
11 for its approval?

12 A I believe so, yes.

13 Q And so the role or lack of role of  
14 Mr. Stephens, from that point going forward, was  
15 something that was decided on personally by your firm  
16 and not dictated to you by the RTC?

17 A That's correct.

18 Q And in fact, had you believed that it was  
19 good management or efficient to have Mr. Stephens  
20 involved in a more active role, do you feel you could  
21 have done so?

22 A Yes.

1 MR. GIUFFRA: Let me ask a question related  
2 to the same point. Did anyone from the RTC ever say  
3 anything to you, saying why isn't Jay Stephens doing  
4 more work on this project after his work sort of  
5 petered out during 1994?

6 THE WITNESS: Well, they understood why.

7 MR. GIUFFRA: What was their understanding  
8 of why he was not doing more work?

9 THE WITNESS: He didn't have anything to  
10 do. In our staffing of the thing, we had run out  
11 of -- we had been through and already passed those  
12 tasks that Jay was associated with.

13 MR. GIUFFRA: Did anyone say we want Jay  
14 Stephens to be more involve with this because he is a  
15 former prosecutor and he is an experienced person?

16 THE WITNESS: No.

17 BY MR. COLE:

18 Q And the tasks or staffing that you  
19 allocated to yourself and Mr. Ericson was based on  
20 your and his experience and expertise in a manner  
21 that was the most logical and efficient allocation of  
22 your firm's resources?

1 A Yes.

2 Q And so basically, you assigned the  
3 investigations to Mr. Ericson and took some yourself,  
4 because you felt that you were the two partners who  
5 had the best experience and were most appropriate to  
6 conduct those tasks?

7 A I think everything about the engagement at  
8 that point in time pointed to the division that we  
9 had. I think if Jay had had familiarity with either  
10 bench or bar in Little Rock, or a close association  
11 with Bob Fiske, or had just simply known Bob Fiske  
12 well, probably that would have been -- we would have  
13 made a different decision.

14 Q And similarly, it was Mr. Ericson's  
15 experience with cases involving forensic accounting  
16 issues, and investigating civil claims involving bank  
17 failures or S&L failures that prompted you to assign  
18 the Whitewater and Rose Law Firm investigations to  
19 him rather than to Mr. Stephens?

20 A Absolutely.

21 MR. GIUFFRA: You would agree, sir, that  
22 Mr. Stephens was obviously competent to conduct this



1 sort of investigation; right?

2 THE WITNESS: Completely.

3 MR. GIUFFRA: Very skilled lawyer; right?

4 THE WITNESS: Absolutely.

5 MR. GIUFFRA: More background in criminal

6 law than either you or Mr. Ericson; right?

7 THE WITNESS: I will say that, yes.

8 MR. GIUFFRA: And that he had had

9 experience in investigating S&L fraud?

10 THE WITNESS: I don't believe so.

11 MR. GIUFFRA: He had experience

12 investigating complex frauds though; right?

13 THE WITNESS: I would assume that he would,

14 as --

15 MR. GIUFFRA: U.S. Attorney.

16 THE WITNESS: -- part of his previous work

17 history, yes.

18 BY MR. COLE:

19 Q And in your discussions with Mr. -- was

20 Mr. Gabrellian the only official at the RTC that you

21 discussed your proposed staffing with?

22 A Yes, to the best of my recollection, he

1 was.

2 Q And he raised no objection to what you were  
3 proposing?

4 A No.

5 Q And when you met with Mr. Gabrellian to  
6 discuss staffing, did you already have in mind what  
7 the proposal that you would make would be?

8 A Yes, my understanding that we were -- it  
9 was our intent, for instance, if we wanted Jay to  
10 review a report, that we could continue to have him  
11 do things like that or we could consult him if we  
12 needed consultation, you know, on matters of criminal  
13 procedure or something of that kind.

14 Q So he would continue to be a resource that  
15 would be available in the engagement?

16 A Absolutely.

17 MR. GIUFFRA: But you chose not to use him  
18 as a resource after, I believe, January '95?

19 THE WITNESS: I don't think we had a reason  
20 to after that.

21 MR. GIUFFRA: Might his judgment have been  
22 helpful, for example, in reviewing all the various

1 reports that were put out by Pillsbury in 1995 and  
2 '96?

3 THE WITNESS: He did review the Whitewater  
4 report.

5 BY MR. COLE:

6 Q Mr. Patterson, had Mr. Stephens wished to  
7 stay more involved in this matter, could he have  
8 communicated that to you, and would you have  
9 considered his wishes?

10 A Certainly I would consider it.

11 Q And did that happen?

12 A No, it did not.

13 MR. GIUFFRA: Did Mr. Stephens ever  
14 indicate to you he was happy not to do more work on  
15 this project because of the possible public  
16 controversy?

17 THE WITNESS: Jay never indicated that to  
18 me one way or the other.

19 MR. GIUFFRA: Did anyone at the RTC say it  
20 was just as well Jay Stephens was not involved in it  
21 anymore?

22 THE WITNESS: No. No.

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1 BY MR. COLE:

2 Q Let me ask you this, Mr. Patterson. Did  
3 Mr. Stephens's role change at about the same time  
4 your firm came to a preliminary conclusion that  
5 claims on behalf of Madison Guaranty against or  
6 related to Whitewater Development Corporation would  
7 not be cost-effective?

8 A No, I think it changed probably in the --  
9 his role to a great extent ended probably in -- like  
10 July or August of '94.

11 Q And had you reached any preliminary views  
12 at that time as to whether or not claims might be  
13 asserted relating to Whitewater Development  
14 Corporation?

15 A Whitewater, no.

16 Q So to the best of your knowledge,  
17 Mr. Stephens's change or diminishment of involvement  
18 had no relationship to the conclusion that claims  
19 probably would not be asserted relating to  
20 Whitewater?

21 A No, it did not.

22 Q Now, Mr. Giuffra asked you a number of

1 questions about the analysis and the conclusions in  
2 the report that Mr. Ericson prepared, the two reports  
3 on Whitewater and the two reports on the Rose Law  
4 Firm. And you testified that you reviewed those  
5 reports but did not give him substantive comments; is  
6 that correct?

7 A Yes.

8 Q Now, were you generally familiar with the  
9 factual matters described in those reports?

10 A Generally, yes.

11 Q And are you familiar enough with the  
12 factual underpinnings to be able to follow and  
13 evaluate the legal analysis in those reports?

14 A Oh, yes.

15 Q And did you have any reservations about the  
16 analysis or conclusions set forth in those reports?

17 A No.

18 Q And if you had had such reservations, would  
19 you have communicated those to Mr. Ericson?

20 A Oh, I certainly would.

21 Q So you view those reports as reports of  
22 your firm and your firm stands behind them 100

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1 percent, to try to be as brief as possible?

2 A Yes, we do.

3 MR. GIUFFRA: Although it is important, so  
4 the record is clear, those reports were written by  
5 one partner without any substantive comment from you.

6 BY MR. COLE:

7 Q There is no need for us to argue on the  
8 record here, but my line of questioning was intended  
9 to establish that Mr. Patterson had a fairly high  
10 level of familiarity with these matters and did  
11 review them for substance, and the fact that he did  
12 not draw different conclusions or have a different  
13 analysis does not mean that he did not perform a  
14 meaningful review.

15 Would you agree with that statement,  
16 Mr. Patterson?

17 A I would guess so. I thought my review was  
18 meaningful, yes.

19 MR. GIUFFRA: Let's ask some questions --

20 MR. COLE: Let me finish my line of  
21 questioning, and if you want to come back to this,  
22 you can.

1 THE WITNESS: Can you all hang on for one  
2 second. Let me get people into a conference room and  
3 get them settled down with coffee. Give me a minute  
4 and I will be right back in.

5 MR. COLE: I am within five minutes of  
6 being finished. We will go off the record for a  
7 moment.

8 (Discussion off the record.)

9 BY MR. COLE:

10 Q In discussing the work that was done  
11 investigating the Whitewater matter, you made a  
12 reference to a concern, if that's the right word, at  
13 the RTC about questions being raised about the  
14 integrity of the agency. Do you recall that?

15 A Yes.

16 Q And when you said the concerns about the  
17 integrity of the agency, what were you referring to?

18 A I was referring to the fact that the RTC  
19 wanted to be certain that Whitewater was associated  
20 with Madison Guaranty, and that a thorough  
21 investigation was done of Whitewater by the agency in  
22 order that there would not be any question that the

1 agency had failed to do a thorough examination.

2 Q In other words, even if this were not a  
3 matter -- if this were not a matter involving an  
4 investment by the President of the United States, and  
5 one in which a small amount of money was involved,  
6 there were institutional interests involved here that  
7 required a thorough investigation that might not  
8 otherwise have been required?

9 A Yes. I mean, it was a matter of, you know,  
10 it was a matter of public comment and speculation at  
11 that point in time. Congress was certainly  
12 interested in it. And from those of us outside the  
13 Beltway, we get the distinct impression that when  
14 those two forces are at work, then governmental  
15 agencies are going to want to be especially thorough  
16 in what they do.

17 Q So even though it might have become  
18 apparent earlier on it wouldn't be cost-effective to  
19 pursue litigation, it was your understanding you  
20 still would be called upon to conduct a complete and  
21 thorough investigation, as complete and thorough an  
22 investigation as possible relating to Whitewater?



1 A Yes.

2 Q And in fact you did that?

3 A To the best of our ability, yes.

4 MR. COLE: I don't have anything further.

5 EXAMINATION

6 BY MR. GIUFFRA:

7 Q Just a couple more questions. With regard  
8 to this question of the review of the reports, do you  
9 recall reviewing the supplemental Rose Law Firm  
10 report?

11 A I recall that, yes.

12 Q Do you recall how much time you spent  
13 reviewing that report?

14 A I don't recall now. I would have read a  
15 draft, but I am not certain that, after that, that I  
16 read a final draft, except maybe on a weekend when I  
17 sat down and read through it.

18 Q Do you have any recollection as to whether  
19 you spent five hours, 10 hours, three hours reviewing  
20 that report?

21 A I have no idea.

22 MR. GIUFFRA: Perhaps if we could -- if

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1 Mr. Gutkin can just get the Pillsbury billing  
2 records, we may have them but I am not sure whether  
3 we have the actual hourly printout, just to show how  
4 much time Mr. Patterson would have spent reviewing  
5 the Whitewater reports, and also the Rose reports.

6 THE WITNESS: The records may not indicate  
7 that -- may not tell you I am reviewing a Whitewater  
8 record, I may be reviewing a draft report or  
9 reviewing documentation.

10 MR. GIUFFRA: That would be fine, but if we  
11 could get them for the relevant period, if you could  
12 fax that to me. Is that fair, Mr. Gutkin?

13 MR. GUTKIN: Yes. I will speak with Chuck  
14 and see what we can find. I am not sure exactly  
15 what's been produced to you already.

16 MR. GIUFFRA: If you produced it, give us a  
17 call, and give us the Bates number just to speed up  
18 the process.

19 MR. GUTKIN: Okay.

20 BY MR. GIUFFRA:

21 Q Now, in reviewing these reports, did you,  
22 as you were reviewing the reports, look at the

1 underlying documentation?

2 A In some cases yes; in other cases no.

3 Q Do you recall in which cases you would have  
4 reviewed the underlying documentation?

5 A In the -- well, in the Castle Grande/1308  
6 report.

7 Q That you actually prepared or had been  
8 prepared under your direction?

9 A Background -- in the first Whitewater  
10 report, I would have seen the results of Tucker  
11 Alan's investigation, and I wouldn't have looked at  
12 every document. I certainly would have known what  
13 their analysis of the document was.

14 Q How about the Rose report?

15 A The Rose report, I would have been familiar  
16 with a number of documents, but a lot of the  
17 information that's in the Rose report and the  
18 supplemental Whitewater report consists of testimony  
19 which is pretty much set out in the documents; some  
20 of which I was familiar with, others I did not look  
21 at.

22 Q Do you recall providing Mr. Ericson with

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1 handwritten comments?

2 A No.

3 Q So this would have been oral comments?

4 A It would have been oral comments.

5 Q Did you meet him face to face or by  
6 telephone?

7 A Both.

8 Q Do you recall on the Rose report whether  
9 you met with him face to face or by telephone?

10 A I think it probably would have been both.  
11 I would have had discussions with him about the Rose  
12 investigation and the report at times when I was in  
13 San Francisco. I probably would have had discussions  
14 with him on the telephone, too.

15 Q With regard to the conclusion as to whether  
16 it would be cost-effective to bring litigation, once  
17 you made a judgment that it was not cost-effective,  
18 the reports become an attempt, am I correct, to  
19 justify that conclusion?

20 MR. GUTKIN: Vague and ambiguous.

21 MR. GIUFFRA: I will restate the question.  
22 It is poorly stated. I agree with that, Counsel.

1 BY MR. GIUFFRA:

2 Q Wouldn't it be fair to say that once you  
3 make a judgment it is not cost-effective to pursue --  
4 strike that.

5 Am I not correct these reports were in part  
6 your effort to explain why it was not cost-effective  
7 to bring litigation against the various parties and  
8 entities described therein?

9 A I don't view them that way and I don't view  
10 them -- I can give you an example with the way Castle  
11 Grande and 1308 came together. We started out with a  
12 gut impression, and a review of some documents that  
13 said these are -- these are real good for several  
14 reasons. Number one was, 1308 is a classic triple  
15 land -- or maybe even quadruple land flip with all  
16 sorts of side frauds set in, but there is not very  
17 much money involved in 1308. So standing alone, it  
18 is a great liability case or looks like a great  
19 liability case, but not much in damages. And  
20 probably not much other than Jim Guy Tucker to  
21 respond to damages, but what we started out doing, we  
22 started by building that, by building the documents

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1 and building the documents until we found out how  
2 good a case we had, coupled that with the damage, and  
3 is there anybody there to respond to it.

4 I usually found that the question of  
5 whether or not it was cost-effective really came at  
6 the end of the report where I -- I mean, that's where  
7 it really came together. What do we really have  
8 here, once we put the facts to what the available law  
9 is.

10 Q That's in the report you prepared, the  
11 Castle Grande/1308 report; right?

12 A Yes.

13 Q With regard to the other reports -- strike  
14 that.

15 With regard to the reports Mr. Ericson  
16 prepared, he sent you a complete report that had a  
17 conclusion in it; right?

18 A Yes.

19 Q Mr. Ericson sent you a number of drafts of  
20 these reports; right?

21 A Yes.

22 Q And the draft reports all contained

1 conclusions; right?

2 A I am not certain whether the early drafts  
3 did. The early drafts may have just been putting  
4 together the factual --

5 Q Well, for example, the Rose supplemental  
6 report, did you get a draft that was a final -- that  
7 was a draft that contained a conclusion?

8 A It was not a final; I think I got one that  
9 contained a conclusion, but certainly I discussed it  
10 with Bruce, and he had discussed with me where he was  
11 going with it and what he was finding.

12 Q What about the Madison report, the second  
13 Madison report?

14 A Whitewater you mean?

15 Q Yes, excuse me, Whitewater.

16 A I think I knew where Bruce was going with  
17 that. He was gathering more information to try to  
18 answer more questions.

19 Q Did you receive a draft that contained a  
20 conclusion with regard to that December '85  
21 Whitewater report?

22 A I think so.

1 Q Did Mr. Ericson send you copies of every  
2 draft that he prepared of these reports?

3 A I think in some cases, yes. And perhaps in  
4 all cases, yes, in fact, I think probably he did, now  
5 that I think about it. He either sent them to me, or  
6 in our computer system, he can send me E-mail which  
7 has the document number for the draft, and I can view  
8 it that way.

9 Q Was there another partner at the firm who  
10 was reviewing these drafts other than yourself?

11 A I don't recall at this time whether Mike  
12 Finnegan and Ken Goss were reviewing drafts. It  
13 seems to me Kent may have reviewed some of the Rose  
14 Law Firm drafts, but I am not certain of that.

15 Q You are in charge of -- are you the head of  
16 the litigation group in the entire firm?

17 A Yes.

18 MR. GIUFFRA: That's it. No further  
19 questions.

20 EXAMINATION

21 BY MR. COLE:

22 Q One final question, Mr. Patterson. The two



1 Whitewater reports were joint reports of your firm  
2 and Tucker Alan; is that correct?

3 A Yes.

4 Q Tucker Alan's name is on the cover of the  
5 report as coauthor of the report?

6 A They supplied the -- I think -- I forget  
7 what's stated on the cover, but certainly they did  
8 the underlying economic analysis.

9 MR. GIUFFRA: Do you know whether they  
10 commented on the substance of the written analysis  
11 that was provided?

12 THE WITNESS: With respect to the  
13 accounting issues or financial issues, yes. With  
14 respect to the legal issues, I doubt it.

15 BY MR. COLE:

16 Q But for the Whitewater reports,  
17 Mr. Patterson, since legal claims were not being  
18 recommended, it was actually the financial and  
19 accounting analysis that was the heart of or the most  
20 important part of those record, was it not?

21 A It was the financial or accounting analysis  
22 that was going to be most important in trying to make

1 the legal analysis of whether there were any claims  
2 there.

3 Q And that was a joint effort between your  
4 firm and the Tucker Alan firm?

5 A Yes.

6 Q And do you have any reason to believe that  
7 the Tucker Alan firm does not agree with anything in  
8 the final written reports on Whitewater?

9 A No.

10 Q In fact, to the best of your knowledge, do  
11 they support those reports in full?

12 A To the best of my knowledge, they do.

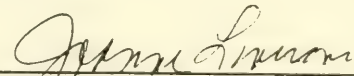
13 MR. COLE: Thank you.

14 MR. GIUFFRA: No further questions. Thank  
15 you very much.

16 (Whereupon, at 1:22 p.m., the deposition  
17 was concluded.)  
18  
19

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20 CHARLES E. PATTERSON  
21  
22

I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

JULY 31, 2000



**DEPOSITION OF BRUCE A. ERICSON  
IN RE: S. RES. 120**

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**VOLUME II**

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**WEDNESDAY, MAY 15, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of BRUCE A. ERICSON, called for further examination pursuant to agreement by counsel, at 7:50 p.m. in Room 535 of the Dirksen Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.  
Majority Chief Counsel  
LANCE COLE, Esq.  
Minority Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

ROBERT A. GUTKIN, Esq.  
Pillsbury Madison & Sutro, L.L.P.  
1050 Connecticut Avenue, NW  
Washington, DC 20036  
On behalf of the Deponent.

JOHN DAVIDOVICH, Esq.  
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Washington, DC 20429  
On behalf of the Federal Deposit Insurance Corporation.



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## 1 PROCEEDINGS

2 Whereupon,

3 BRUCE A. ERICSON

4 resumed the stand and, having been previously duly  
5 sworn, was examined and testified further as follows:6 MR. GIUFFRA: This is a continuation of  
7 Mr. Ericson's deposition, which originally commenced  
8 on --

9 THE WITNESS: Friday, May 10.

10 MR. GIUFFRA: May 10. Mr. Ericson, you  
11 understand you're still under oath?

12 THE WITNESS: I do.

13 MR. GIUFFRA: Let's begin.

14 EXAMINATION (Continued)

15 BY MR. GIUFFRA:

16 Q This is based on a deposition we just  
17 concluded. With regard to the October draft of the  
18 Madison report that you circulated to Mr. Stephens --19 A I assume you mean preliminary report on  
20 Whitewater, yes.21 Q You testified in your deposition that he  
22 did not give you any substantive comments on the

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1 draft.

2 A I think I used words to that effect, yes.

3 Q He testified this afternoon that he did, in  
4 fact, give you some substantive comments. Does that  
5 in any way refresh your recollection as to whether  
6 Mr. Stephens gave you any substantive comments?

7 A No.

8 MR. COLE: I'm not sure Mr. Stephens used  
9 the word "substantive." He testified to some  
10 comments he recalled giving to Mr. Ericson, and I  
11 suppose it would be a matter of personal judgment as  
12 to whether or not they were substantive. So perhaps  
13 we should tell Mr. Ericson what the comments were  
14 that Mr. Stephens described and see if that refreshes  
15 his recollection.

16 MR. GIUFFRA: I'm going to do that.

17 BY MR. GIUFFRA:

18 Q One comment he said was that he had a  
19 concern that the report failed to convey the pattern  
20 of fraudulent activity that was going on at Madison  
21 and also involved McDougal entities, and that it was  
22 sort of a segmented report looking at specific

1 transactions. Do you recall that comment?

2 MR. GUTKIN: I think part of that question  
3 misstates Mr. Stephens's testimony. I'm not going to  
4 instruct him not to answer, but the question can  
5 stand. But I think it misstates testimony on what  
6 Mr. Stephens said.

7 THE WITNESS: I recall nothing of that  
8 sort.

9 BY MR. GIUFFRA:

10 Q Nothing about whether the report did not  
11 give a global picture of what was going on at Madison  
12 and was segmented?

13 A No, I don't recall any comment of that  
14 sort.

15 Q Any comment about the fact that in  
16 analyzing the Whitewater transaction, the report did  
17 not sufficiently take into account that the Clintons  
18 put in far less into the investment than the  
19 McDougals did?

20 A No. I recall nothing of that sort.

21 Q He assumed that the report was a perfectly  
22 normal way to conduct business, and the question

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1 might be raised as to whether other issues might be  
2 raised by the fact that the Clintons and McDougals  
3 made disproportionate contributions to the  
4 investment?

5 A I recall no comment along those lines. No,  
6 I just never heard anything of that sort.

7 Q Did he say anything --

8 A Obviously, a number of these purported  
9 statements are things I would disagree with, but  
10 that's not what you're asking me, whether I agree or  
11 disagree. You're asking whether these things were  
12 conveyed to me, and my answer is no.

13 Q Did he in any way indicate to you that he  
14 thought that this preliminary draft did not rely  
15 sufficiently on witness interviews and focused just  
16 on an accounting analysis?

17 A Did he say something, not in quite the  
18 words you're using -- but now that you say that, I  
19 have this much recollection. He said something about  
20 witnesses, and it was -- let me think about this for  
21 a second as accurately as I can. The gist of which  
22 was -- we both recognize that the draft relied very

1 heavily on documents as opposed to witness  
2 interviews, and I said as much to you on this last  
3 Friday.

4 He made a comment, not so much this was a  
5 failing in the report, but that the report would be  
6 better or a more bulletproof product -- that's not  
7 the word he used, but that was the implication -- if  
8 we were to follow this up by doing some witness  
9 interviews. So he said that. I didn't take it so  
10 much as a criticism but a suggestion, but he did say  
11 something along those lines.

12 Q Did you, in fact, subsequently do  
13 additional witness interviews on the Whitewater  
14 report?

15 A Not to any great extent.

16 Q You had the interrogatories from the  
17 Clintons?

18 A Yes, we had that. I don't want to say we  
19 did nothing. We didn't do any great number. We  
20 considered it. You'll recall you showed me a case  
21 planning budget or something like that from December  
22 that listed a number of potential additional

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1 interviews. We were thinking about doing some, and I  
2 testified about that last Friday. As I also  
3 testified last Friday, we didn't end up doing most of  
4 those.

5 Q Why did you choose not to conduct those  
6 additional interviews?

7 A I mainly didn't feel they were that  
8 significant given what we knew about Whitewater, and  
9 I decided not to do them.

10 Q What were the interviews that you  
11 considered doing but did not do?

12 A The ones listed in that memorandum. I  
13 don't have it in front of me. I can't tell them all,  
14 but there were a number of people.

15 Q This would have been Don Denton, lending  
16 officers at the bank -- you can say yes or no.

17 A You're going to test my recollection of the  
18 document. I think Denton may have been mentioned.  
19 I'm not sure.

20 Q I'm reading from the document now.

21 A What are we proving; your ability to read  
22 or my ability to remember?



1 Q I want to go through each of the witnesses,  
2 and tell me why you decided not to do an interview or  
3 deposition of those witnesses.

4 A Okay.

5 Q Don Denton and lending officers at Union  
6 Bank.

7 A I think the answer was all of them -- with  
8 respect to all of them would be the same, which is  
9 that marginally productive -- we basically knew the  
10 outline of the transactions and we didn't think  
11 they'd have much to add, and we knew it was a low  
12 dollar amount situation, which we basically  
13 understood it, and it seemed like a waste of money  
14 frankly.

15 Q The Committee has obtained testimony from  
16 Mr. Denton indicating that he was told that he should  
17 make this loan to Governor Clinton by a person who  
18 was a lobbyist for the bank. And we subsequently  
19 learned from Mr. Paul Berry, who was the lobbyist,  
20 that Governor Clinton and Berry spoke about this loan  
21 and Governor Clinton asked to have the loan made to  
22 him, and that was the reason why the loan was made.

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1 MR. COLE: I'm not sure that's an accurate  
2 recitation of the testimony, but for purposes of  
3 asking you the question, Mr. Ericson, I'm not going  
4 to object. But I want to note that I don't  
5 necessarily agree with Mr. Giuffra's summary of the  
6 testimony.

7 MR. GIUFFRA: Do you want to correct my  
8 summary? We don't have the testimony in front of  
9 us. I'm doing it off the top of my head.

10 BY MR. GIUFFRA:

11 Q Would you consider that to be information  
12 you would have wanted to incorporate into your  
13 report?

14 A What loan are you talking about?

15 Q This would be the \$20,000 down payment  
16 loan.

17 A Yes.

18 Q So you would have included that in the  
19 report?

20 A Yes. Let me add to my previous answer that  
21 I believe Mr. Patterson interviewed Mr. Denton.

22 Q I don't think he got that information

1 during the course of his interview.

2 A I think you're right about that. If he got  
3 it and was aware of it, I would have included it.  
4 But I want to say that I interviewed Denton and I  
5 know I had some discussion with Mr. Patterson about  
6 Denton as a witness.

7 Q How about lending officers at Worthen Bank?

8 A Same reason, that it was of marginal  
9 interest and basically a waste of money.

10 Q How about James Patterson, Terry Wood and  
11 Kearnie Carlton, they were the sellers for 101  
12 development corporation?

13 A I don't know what they would have had to  
14 add to anything.

15 Q How about Ron Proctor and Frank Burge of  
16 Citizens Bank?

17 A Same basic reason. It didn't seem very  
18 cost-effective.

19 Q Gary Bunch, Theresa Pockrus, Blenda Howard  
20 of Madison Bank?

21 A Let me answer with the additional caveat  
22 that I believe one of my partners interviewed bunch.

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1 Q Marlon Jackson and Bank of Paragould?

2 A Same answer.

3 Q Maurice Smith of Cherry Valley?

4 A Same answer.

5 Q Lending officer at Stephens Security Bank?

6 A Same answer.

7 Q Chris Wade, you would have liked to have  
8 spoken to him?

9 A Yes, I made numerous efforts to talk to  
10 Chris Wade. I talked many times to his lawyer,  
11 Lassiter. In fact, I drafted a lengthy set of  
12 interrogatories to Wade when I thought I might get  
13 him to agree to that, if not an interview, and made a  
14 lot of efforts to talk to Wade, but it never came to  
15 pass. He frankly sort of played cat and mouse with  
16 me and ultimately said his client would take the  
17 fifth, so there I was.

18 Q Steve Smith?

19 A I'm sorry, who?

20 Q Steve Smith. Doesn't ring a bell?

21 A I can't hear you is the problem. I don't  
22 know what you said.

1 Q Stephen Smith.

2 A Stephen Smith would be the same answer. A  
3 very marginal interest and not cost-effective.

4 Q John Latham?

5 A Well, Latham I already testified to as  
6 somebody we had an interest in, but we were unable to  
7 interview him.

8 Q Sue Strayhorn?

9 A Strayhorn was interviewed at length by some  
10 of my colleagues, and I don't think I had anything to  
11 ask her or very little above and beyond what they  
12 asked.

13 Q How about Jack Stephens?

14 A Best of my recollection, Stephens was with  
15 the people who owned the Deltic parcel? Is that who  
16 you're referring to?

17 Q Correct.

18 A Extremely marginal interest in him and not  
19 at all cost-effective. The Deltic transaction was a  
20 very minimal interest.

21 Q How about Betsey Wright?

22 A I talked for a while to Betsey Wright's

1 counsel and discussed with him to some extent what  
2 she would or would not have to say. I obtained some  
3 documents from her via subpoena and looked them over  
4 and ultimately made the decision that again, it was  
5 not cost-effective and not worth it.

6 Q In deciding -- strike that.

7 Once you sent this memo, which I think  
8 probably we can agree is probably December '84 --

9 A '94.

10 Q '94, I apologize. It's getting late back  
11 east. Did you have conversations with Mr. Gabrellian  
12 and other people at the RTC whether it would be  
13 cost-effective to conduct these additional  
14 interviews?

15 A Yes.

16 Q And did Mr. Gabrellian, was he part of the  
17 decisionmaking process, and other persons at the RTC  
18 as to whether it was cost-effective to conduct these  
19 interviews -- let me restate the question.

20 A I was going to say I'm not sure I'd know.

21 Q Did the client have any decisionmaking  
22 authority as to whether you should go forward with

1 these additional interviews or depositions or were  
2 you basically giving carte blanche to do whatever you  
3 wanted?

4 A I was basically giving carte blanche to do  
5 whatever I wanted on that. The client saw this  
6 budget -- my recollection is the client basically  
7 approved this budget and said you can do this if you  
8 want, and I made the decisions that I've indicated  
9 I've made.

10 Q Mr. Stephens, in his deposition, indicated  
11 in the January, February 1994 period when I think you  
12 would agree he was most involved in this matter --

13 A February 1994 would be the time of his  
14 greatest involvement. There was no matter in  
15 January.

16 Q I'm sorry, that was a mistake on my part.  
17 February and March '94 when he had his greatest  
18 involvement, that at least his experience was that  
19 the RTC was very hands-on in management of the  
20 matter. Do you recall that?

21 A The RTC was always very hands-on in the  
22 management of every matter I've ever worked with the

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1 RTC on.

2 Q So that before you would take depositions,  
3 do interviews, you would discuss that decision with  
4 the RTC?

5 A The answer is basically yes, with this  
6 caveat: As I told you earlier yes, until the later  
7 phases of 1995, I didn't take most of the interviews  
8 and didn't do most of the depositions. So I didn't  
9 have those discussions. But yes, to the extent that  
10 I conducted interviews and took depositions, I would  
11 discuss that with my client, yes.

12 Q Would you seek to get the client's consent  
13 before you went forward with -- strike that.

14 Would you seek to get the client's input as  
15 to whether it made sense to go forward with various  
16 interviews and depositions?

17 A Input, yes, in a sense. I would discuss  
18 what I planned to do with the client and the client  
19 might or might not express any views, but I basically  
20 felt I could do as I saw fit. But I very much  
21 believe in keeping the client informed and the RTC as  
22 a client wanted very much to be kept informed, so



1 yes, I take great pains to keep clients apprised of  
2 what I'm doing.

3 MR. COLE: One question, Mr. Giuffra, if I  
4 could, for Mr. Ericson.

5 EXAMINATION

6 BY MR. COLE:

7 Q Understanding you kept the client informed  
8 and consulted frequently and closely with the client  
9 about the work you were doing, Mr. Ericson, did the  
10 RTC ever permit you from pursuing a line of inquiry  
11 in your investigation?

12 A No.

13 Q Did they ever dictate to you that you  
14 should use a particular investigative method or  
15 present the results of your investigation in a  
16 particular manner?

17 A No.

18 Q So it was a collaborative process, but in  
19 general, you were permitted to conduct the  
20 investigation according to your best professional  
21 judgment?

22 A Oh, absolutely. I mean, if it hadn't been

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1 that, I would have quit.

2 BY MR. GIUFFRA:

3 Q Were there any instances when you advised  
4 the RTC of any decision you were going to make during  
5 the course of the investigation with regard to any  
6 subject, and after consultation with the RTC you took  
7 a different action?

8 A That's awfully broad. Could you rephrase  
9 that or focus it a little.

10 MR. COLE: Anything of substance we would  
11 agree.

12 THE WITNESS: Are we talking about  
13 investigative technique or what I was going to do?  
14 I'll tell you what. Let me tell you what about the  
15 question makes it difficult to answer. Are you  
16 talking about editing reports and style changes and  
17 things like that? I don't think so, are you?

18 BY MR. GIUFFRA:

19 Q No, I'm talking about -- let's start at the  
20 beginning. With regard to communications with the  
21 Independent Counsel, is it not the case that  
22 Ms. Kulka wanted to keep that function within the

1 RTC?

2 A I've heard that. I don't have any personal  
3 knowledge of that.

4 Q No understanding one way or the other, no  
5 discussions with anyone at your firm as to whether  
6 that's the case?

7 A That's not what I said. I said I heard  
8 that. Chuck Patterson indicated to me from time to  
9 time that he had discussions with people at the RTC  
10 about Ms. Kulka's desires, but I don't have any  
11 firsthand knowledge of these.

12 Q With regard to things that you did have --

13 A Let me add one thing. I probably shouldn't  
14 volunteer given the lateness of the hour in D.C. --  
15 you probably wish I wouldn't volunteer, but let me  
16 add one thing. I rarely talked to anyone at the  
17 Independent Counsel. Mr. Patterson handled almost  
18 all of those communications, so this wasn't something  
19 I was particularly focused on. Because I simply  
20 don't know those people and except on rare occasions,  
21 I didn't talk to them.

22 Q Were there any -- strike that.

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1 With what frequency do you estimate you  
2 spoke with the client, daily?

3 A Oh, not always, but there certainly were  
4 large periods in which we would speak daily or even  
5 several times a day.

6 Q In the course of necessities, conversations  
7 with the client, were you merely advising the client  
8 as to what you were going to do, or were you seeking  
9 the client's input and judgment as to how you were  
10 going to proceed?

11 A I would say more the latter than the  
12 former. I wouldn't sort of -- the former has a sort  
13 of preemptive sound to it that strikes me as not  
14 right. I certainly wouldn't call up the client and  
15 say this is what I've decided, this is what we are  
16 going to do, you are hereby notified or anything like  
17 that. One doesn't deal with clients that way. It  
18 would be more, I'd say, this is what I'm thinking of  
19 doing, do you have any thoughts on that, and we might  
20 kick it around.

21 Q So the client had input throughout the  
22 investigation as to the course you were going to be

1 taking?

2 A They make suggestions, and they like to be  
3 kept informed, but I don't wish to give the  
4 impression that they were busy bodies in the sense  
5 that they had -- would inundate you with suggestions  
6 or things like that. A lot of it was -- while it  
7 would be couched, as I've tried to indicate, in terms  
8 of this is what I'm thinking of, it really would end  
9 up being more informational than anything else. Is  
10 that clear?

11 MR. COLE: It's clear to me.

12 BY MR. GIUFFRA:

13 Q But there were instances -- strike that.

14 Were there any instances in which after you  
15 advised -- the client adds to a particular course you  
16 were going to take with regard to the investigation.  
17 After discussions with the client, you took a  
18 different course?

19 A You know, I can't remember anything of that  
20 sort. I'm reluctant to say I was never convinced  
21 that something could be improved or that somebody  
22 didn't make ample suggestion. I'm sure from time to

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1 time people gave me good ideas that I adopted, but I  
2 can't think of anything of any importance like that  
3 offhand. Again, it's hard to recall the years of  
4 meetings and telephone conversations and the like,  
5 but I certainly don't remember ever being reoriented  
6 in any material way.

7 BY MR. COLE:

8 Q And the RTC was relying on you and your  
9 firm to conduct this investigation and manage the  
10 day-to-day affairs of the investigation, and they  
11 expected you to keep them informed and you did? Is  
12 that a fair description of the way the engagement was  
13 structured, Mr. Ericson?

14 A I think so. They were perhaps a little  
15 more active with input than your phrasing might make  
16 it suggest. And I would note that there were RTC  
17 investigators -- I mean nonlawyer personnel who were  
18 off doing things of their own. But with those  
19 modifications, I think what you've said is fair.

20 Q Mr. Igo worked with you. Was he the person  
21 at the RTC you worked with most?

22 A In the latter phases, yes. At earlier

1 times, that was not as true.

2 Q Who would you have worked with in the  
3 earlier period?

4 A It was more evenly divided among Mark  
5 Gabrellian, Terry Arbit, Melinda Medor -- which is  
6 M-e-d-o-r, it was kind of garbled in the last  
7 transcript -- and also Jim Igo.

8 Q What was your understanding as to the  
9 number of matters Mr. Igo was working on? Did he  
10 work on any other matters for the RTC besides this  
11 one?

12 A I think so because he occasionally would  
13 allude to other matters, but I can't tell you how  
14 many there were or what they were.

15 Q Did Mr. Gabrellian work on a number of  
16 other matters besides this one?

17 A I don't really know and I should add that  
18 Mr. Gabrellian was at the senior level counsel, which  
19 is a level above the line level, so he didn't so much  
20 handle individual cases as supervise attorneys who  
21 handled individual cases. With that caveat, again,  
22 my answer is I really don't know what else he had on

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1 his plate.

2 One further thing I should add. In the  
3 early stages of this investigation, we hadn't yet  
4 settled it -- or finally settled the Dean case I  
5 described last Friday. Mr. Gabrellian was the senior  
6 counsel on the Dean case. Again, he's not the person  
7 who had line responsibility for that case, but he was  
8 the boss of that person.

9 Q Was Terry Arbit a line attorney?

10 A Yes.

11 Q Do you know whether she had additional  
12 matters?

13 A Terry is a man.

14 Q I'm sorry, whether he had additional  
15 matters?

16 A I know he had at least one in Michigan. He  
17 told me he was going up there to attend the trial.

18 Q And Melinda?

19 A Melinda Medor, I don't know what else she  
20 had.

21 Q Did you have an understanding that at least  
22 the line attorneys at the RTC were spending the



1 majority of their time on the Madison investigation  
2 that you dealt with?

3 A I really don't know.

4 BY MR. COLE:

5 Q I believe that the attorneys you mentioned  
6 were in the professional liabilities section of the  
7 RTC; is that correct, Mr. Ericson?

8 A That's correct.

9 Q And in the general counsel's office, who  
10 did you deal with most frequently?

11 A I didn't deal with anyone in that office  
12 with any frequency, to the extent I had contact with  
13 anyone in that office. I had contact, as I indicated  
14 last time, with Ellen Kulka at a few meetings, and I  
15 had occasional contact with Andy Tomback.

16 BY MR. GIUFFRA:

17 Q Would you describe Andy Tomback as someone  
18 who was an important person to the client, as  
19 somebody you dealt with a lot?

20 A I didn't deal with him a lot. That's a  
21 compound question, and I better sort it out. He is  
22 an important person or was an important person to the

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1 client in the sense he was number 2 in the legal  
2 department, but I did not deal with Andy Tomback a  
3 lot. I saw them at occasional meetings. We met a  
4 few other times. I recall he visited out here once,  
5 I think once -- I don't remember why. I talked to  
6 him from time to time, but no means with the  
7 frequency I would speak to the other people I've  
8 indicated.

9 Q Were you aware that Mr. Tomback had  
10 formally been a political appointee in the Treasury  
11 Department?

12 A Political appointee of the Treasury  
13 Department?

14 Q Within the Treasury Department.

15 A No. At some point soon after he came to  
16 the RTC, I heard of or perhaps read an article, I  
17 think in The Washington Post, that had something to  
18 do with his hiring, but I don't remember what you've  
19 just said. That doesn't ring a bell.

20 Q What I'd like to do now is direct your  
21 attention to the third week of March 1994. Do you  
22 recall a series of newspaper articles discussing the

1 retention of Pillsbury by the RTC?

2 A Well, as I testified to last Friday, I  
3 recall seeing or hearing about some articles mostly  
4 involving Mr. Stephanopoulos.

5 Q Did you have any discussions about those  
6 articles with anyone at the RTC?

7 A As I testified to on Friday, nothing other  
8 than attorney sort of conversations, if that.

9 Q Did anyone indicate to you -- anyone at the  
10 RTC indicate any concern about the articles, any  
11 concern?

12 A In a bantering sort of way I've already  
13 testified to. One might describe it as sort of eye  
14 rolling, e-y-e. Here we go, we're in the press, that  
15 sort of thing, but that's about it.

16 Q Anything else?

17 A No.

18 Q Within the Pillsbury firm, was there any  
19 discussion of these articles?

20 A Chuck Patterson and I probably discussed  
21 them a little, but beyond that, I can't recall  
22 anything.

1 Q Do you recall anything about the substance  
2 of your communication with Mr. Patterson?

3 A No. I really don't recall the substance.  
4 If I could -- the closest I can comment is to think  
5 this sort of thing in the press is a nuisance or  
6 whatever, but nothing beyond that.

7 Q Obviously, you don't want to have press  
8 attention like this when you're trying to conduct  
9 this kind of investigation; right?

10 A I think that's a fair statement, yes.

11 Q And I think people at the RTC would agree  
12 you wouldn't want to have -- strike that.

13 Did you have any discussion with anyone at  
14 the RTC to the effect they wish there wasn't this  
15 press attention given to the retention of Pillsbury?

16 A No. I think the point you made with which  
17 I agree is blindingly obvious, and I recall no such  
18 discussion with anybody.

19 Q Did you have any discussion with anyone,  
20 the client or the firm, that perhaps it might be best  
21 in light of these articles that Mr. Stephens take a  
22 lower profile on this matter?

1 A No, not at all.

2 Q Are there any standard procedures at  
3 Pillsbury with regard to keeping members of a team  
4 abreast of correspondence with the client?

5 A As phrased, no.

6 Q For example, do you normally circulate to  
7 the other partners working on a matter,  
8 correspondence with the client?

9 A Do I? I'm afraid my practices in that  
10 regard are slap-dash. I make some effort to  
11 circulate things so that people know what they need  
12 to know. In this particular engagement, you have  
13 people in different offices, and as I previously  
14 indicated for a long time, the team was kind of  
15 fluid, so it logistically was difficult to do that.  
16 The only other thing I'd add is that we don't have a  
17 tremendous amount of correspondence from the client.

18 Q How about memoranda that might be prepared  
19 analyzing possible claims?

20 A I didn't make any particular effort to  
21 calculate that sort of thing. I certainly would look  
22 from time to time at memoranda prepared by others,

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1 but the thrust of your question was do we have  
2 procedures or something for the sort of regular  
3 circulation of such things and the answer is no.

4 Q Let's turn to this matter. With regard to  
5 this matter, to whom would you circulate  
6 correspondence with the client?

7 A Well, as I think I've just said, I didn't  
8 routinely circulate it and there wasn't much  
9 correspondence.

10 Q How about memoranda that you prepared  
11 analyzing claims?

12 A I didn't routinely -- I'm sure I prepared  
13 many memoranda analyzing claims. Let me think for a  
14 second.

15 I personally didn't prepare many things of  
16 that sort. Because I didn't prepare them, I didn't  
17 have occasion to circulate them or not circulate  
18 them.

19 Q Let's take drafts of reports. To whom  
20 would you circulate drafts of reports?

21 MR. COLE: I bet the answer is it depends  
22 on the report.

1 THE WITNESS: I can generalize here a  
2 little bit. I hate to disappoint you, but generalize  
3 a little. Drafts -- let's distinguish between  
4 internal product and product that went to the  
5 client. With respect to internal construct that  
6 wasn't yet at a stage where I want to send it to the  
7 client, I would share it with the people who were on  
8 our team for the particular report. There's no  
9 formal way of circulating it. I was just working  
10 with them face to face, and I gave them something,  
11 and they'd look at it and mark it up or give it back  
12 to me or whatever.

13 BY MR. GIUFFRA:

14 Q Which partners would you circulate the  
15 reports to?

16 A Oh, partners? Seeing as I have in mind  
17 chiefly the Whitewater work, it would be more a case  
18 of circulating it to the Tucker Alan people and some  
19 associates than any partners.

20 Q Would you have circulated drafts to  
21 Mr. Patterson?

22 A I may have on occasion, but not routinely.

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1 With respect to, again, what I'm describing as  
2 internal drafts.

3 Q How about to Mr. Stephens?

4 A No.

5 Q How about what you would describe as an  
6 external draft?

7 A An external draft, which is one I sent to  
8 the client, I would normally or routinely send a copy  
9 to Chuck Patterson. On occasion, but not that many  
10 occasions, I sent copies to Jay Stephens. On  
11 occasion, I sent copies to Kent Goss and/or Mike  
12 Finnegan.

13 Q Am I correct that the only thing you would  
14 have sent to Mr. Stephens would have been the October  
15 draft of the preliminary Whitewater report?

16 A No, that's not correct.

17 Q Would you have circulated any drafts to  
18 Mr. Stephens in 1995?

19 A I don't know if it was late 1994 or early  
20 1995, but I'm reasonably sure that I circulated a  
21 draft to him in the latter part of December or early  
22 January.



1 Q Of the Whitewater report?

2 A Yes, of the Whitewater report.

3 Q Do you know why Mr. Stephens stopped  
4 attending meetings with the client to a large extent  
5 after March '94?

6 A I'm not sure I know that he did, let alone  
7 why.

8 Q Well --

9 A I'm 2500 miles away, but I'm just --

10 Q Let me ask another question. In February,  
11 March 1994, when you attended meetings in Washington,  
12 D.C. with the client, did Mr. Stephens also attend  
13 those meetings?

14 A I think that Jay and I have attended a  
15 couple of meetings together with the client. I'm not  
16 sure they were all in February and March, but I don't  
17 have any firm recollection of what meetings or what  
18 they were about.

19 Q Do you recall attending any meetings  
20 without Mr. Stephens with the client in February or  
21 March 1994?

22 A I have no recollection one way or another.

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1 Q How about after March 1994, do you recall  
2 attending any meetings with the client with  
3 Mr. Stephens?

4 A At least one. I'm not sure exactly when it  
5 was, but I think it was April, May or June as opposed  
6 to March. I do recall attending one meeting with the  
7 client with Mr. Stephens.

8 Q Do you recall what the substance of the  
9 meeting was?

10 A Yes. It was either to meet our minority  
11 co-counsel and/or to meet representatives of GOW &  
12 Associates.

13 Q Now, with regard to Jordan & Keys, they  
14 were assigned specific transactions to analyze;  
15 correct?

16 A Yes.

17 Q Did they do reports that were independent  
18 of your reports?

19 A Yes. On occasion, we would see drafts or  
20 intermediate versions of those reports, but it's  
21 their independent work, yes.

22 Q Did they comment on your drafts?

1 A They were given several drafts or I sent  
2 them several drafts -- let's not put it in the  
3 passive -- of at least the preliminary report on  
4 Whitewater -- I'm not sure I sent them drafts of any  
5 other report. At least the preliminary report on  
6 Whitewater, they received one or more drafts, yes.

7 Q Did they make any substantive comments on  
8 the draft that you sent them?

9 A I don't recall receiving any comments of a  
10 substantive nature, no.

11 Q Did you review any of their drafts?

12 A Yes, I think so, but I don't have a very  
13 good recollection as to what it was about.

14 Q Do you recall making any substantive  
15 comments?

16 A Not to them, no.

17 Q Was there ever any discussion with the  
18 client or within the RTC about the fact that the  
19 project was being segmented between yourself and  
20 Jordan & Keys, and perhaps that might be a limitation  
21 on your analysis?

22 A No. As you phrased it, no.

1 Q Was there ever any discussion about the  
2 fact that -- strike that.

3 Was there any discussion about possible  
4 limitations and analysis being done by either you or  
5 Jordan & Keys, by virtue of the fact that different  
6 firms were handling different aspects of this?

7 A No, I don't recall any such discussion.

8 Q Jordan & Keys, just so we have it on the  
9 record -- and I apologize if we've already gotten  
10 this the other day -- they handled Campobello and  
11 what other projects?

12 A There were half a dozen or so real estate  
13 projects and I doubt I could name them all.  
14 Campobello was in money terms the largest of the  
15 projects. They did a report on check kites.

16 Q At Madison?

17 A At Madison, and they may have done  
18 something else, but half a dozen real estate projects  
19 and the report on check kites is what I recall.

20 Q Did they also do something on Maple Creek?

21 A I'm not sure they did one on Maple Creek.

22 Q How did you divide up responsibility

1 between Jordan & Keys and yourself with regard to  
2 check kiting at Madison, or was their report  
3 duplicative of your report?

4 A No, I wouldn't say it was duplicative. You  
5 say I; I'm not sure that I divided it up. You might  
6 have to ask Mr. Patterson about that. Someone -- it  
7 wasn't me -- but someone decided to give them that  
8 project, but I don't recall who.

9 Q Would that have been a decision made by the  
10 client?

11 A I don't know. Again, you'd have to ask the  
12 client or Mr. Patterson because I don't know the  
13 answer.

14 Q The decision to produce a series of  
15 reports; for example, one on Whitewater, one on the  
16 Rose Law Firm, one on Castle Grande as opposed to one  
17 single large report, who made that decision?

18 A I don't recall ever giving consideration to  
19 writing one large report. I just don't recall any  
20 discussion or conscious decision with respect to  
21 that. As I indicated last Friday, Mr. Patterson  
22 divided up the work, and I think -- at least in my

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1 thinking, it flowed fairly naturally from that that  
2 we would write it up separately. I just don't ever  
3 recall discussing the point you're raising.

4 BY MR. COLE:

5 Q Did Mr. Stephens ever indicate to you he  
6 believed that a single large report on all Madison  
7 Guaranty matters should be prepared?

8 A I don't recall him ever saying such a  
9 thing.

10 Q Did he ever indicate to you any concern  
11 that because you segmented your reports into various  
12 areas, that you might fail to cover certain areas or  
13 fail to have a thorough overall analysis?

14 A I don't ever recall him saying such a  
15 thing.

16 BY MR. GIUFFRA:

17 Q Do you think a limitation in the work you  
18 did -- strike that.

19 Do you think your analysis was in any way  
20 limited by virtue of the fact that Jordan & Keys  
21 handled some transactions, and at Pillsbury different  
22 teams handled different transactions?

1 A No, I don't think our analysis was in any  
2 way limited by that.

3 Q Do you have anything further to add on that  
4 point?

5 A Anything further to add on that point? Let  
6 me add this: Working with a team of people located  
7 in three cities on occasion had its frustrations  
8 simply because we were geographically dispersed. It  
9 made it a little difficult to know what the other  
10 guys were doing, and I think on occasion that was at  
11 least a source of mild frustration for me, but I  
12 don't think it was anything more than that. I don't  
13 think it limited our analysis, which is what your  
14 question was.

15 Q Let's turn to the Whitewater report and  
16 once I'm done with that, we'll be finished.

17 A Okay.

18 MR. COLE: Are we looking at the  
19 preliminary Whitewater report now?

20 MR. GIUFFRA: Yes.

21 THE WITNESS: Do you want me to have it in  
22 front of me?

1 MR. GIUFFRA: Yes.

2 BY MR. GIUFFRA:

3 Q As we briefly discussed, this was largely a  
4 document based on the work of Tucker Alan; right?

5 A Well, the work of Tucker Alan together with  
6 our firm. We worked in very close contact,  
7 physically speaking. The Tucker Alan people were  
8 here in our office, here in San Francisco, literally  
9 for months. They were down the hall from me. We  
10 spent a lot of time working together and our people  
11 spent a lot of time working with their people, but  
12 certainly they made a very great input to this  
13 report, yes.

14 Q What you were trying to do was trace the  
15 flow of money in an accounting sense from Madison  
16 Guaranty to Whitewater?

17 A Yes, that was our primary objective.

18 Q Did you make any effort to try to ascertain  
19 whether funds from other federally insured depository  
20 institutions found their way into Whitewater?

21 A That was not a goal as such. Certainly,  
22 the work would cause us to look for that sort of



1 thing. I mean, the work of reconstructing accounts,  
2 looking at deposits, looking at checks and so on  
3 caused us to see that sort of thing on occasion but  
4 it was not a primary objective. Our objective was to  
5 see whether we could tie Whitewater to Madison  
6 because as a possible plaintiff we stood in the shoes  
7 of Madison and we would not have a claim unless the  
8 claim involved injury to Madison.

9 MR. GIUFFRA: Let's take a break here for  
10 30 seconds. She's got to change the tape.

11 (Pause.)

12 BY MR. GIUFFRA:

13 Q So one limitation in your analysis is if  
14 money was fraudulently obtained from insured  
15 depository institutions other than Madison, that  
16 would not have been flagged in your reports?

17 A I'm not sure I agreed with that. As I  
18 tried to indicate in my last answer, we attempted to  
19 trace deposits into Whitewater wherever they came  
20 from, as potential plaintiff, we focused on the most,  
21 Madison, but we attempted to figure out where the  
22 money came from regardless of the source.

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1 Q But the further you got from Madison  
2 obviously, the more difficult it would be for you to  
3 trace the money; right?

4 A Not necessarily.

5 Q Let's go to pages 2 and 3 of your report.

6 A Okay.

7 Q Here you discuss limitations in your  
8 analysis and the first you identify the fact that  
9 money is fungible.

10 A Yes, I see that.

11 Q Now, were there large number of instances  
12 in which funds were transferred from McDougal  
13 controlled accounts into Whitewater where the only  
14 funds in the accounts -- where the funds in the  
15 accounts did not just come from Madison Guaranty?

16 A Just did not? I'm not sure I would agree  
17 with a large number. There were some instances. We  
18 outlined them in the report where the funds deposited  
19 into the McDougal controlled entity came from a  
20 source other than an account guarantee, yes, and  
21 those are indicated in the report and in the charts  
22 that accompanied the report.

1 Q Why don't we turn to the supplemental  
2 report dated December 13, 1995 just briefly.

3 A Wait a second. I need to grab that one.  
4 Okay, I have it.

5 Q Just focusing on pages 5 and 6, you  
6 identify 134,194 as the upper bound with regard to  
7 the amount of funds that could conceivably be  
8 traceable to Madison; right?

9 A Well, that's not quite what this says.  
10 What it says is "this figure of \$134,194 places an  
11 upper bound on the benefit to Whitewater from funds  
12 traceable to Madison Guaranty" and it goes on from  
13 there.

14 Q Further down the page, you indicate there's  
15 another \$39,474 that paid down in the debt to  
16 Whitewater and you don't know the source?

17 A Towards the bottom of the page, yes.

18 Q A little bit further down, you say "The  
19 sources of the money is not enough and the quarterly  
20 cannot be tied in any way to Madison Guaranty." Do  
21 you see that?

22 A Yes.

1 Q Am I not correct that some of that \$39,000  
2 could have been from Madison Guaranty?

3 A One can only speculate. We couldn't tie it  
4 to any source. I can't negate the possibility that  
5 it could have come from Madison Guaranty, but we  
6 simply couldn't determine the source of it.

7 BY MR. COLE:

8 Q And in fact, you did what you could through  
9 the records of Madison Guaranty to check to see if it  
10 had come from that source; is that correct?

11 A Yes, we certainly did.

12 Q And while Mr. Giuffra is asking you to  
13 absolutely state that something did not occur, I  
14 think one could perhaps question the likelihood of it  
15 coming from Madison --

16 MR. GIUFFRA: Why don't we ask Mr. Ericson  
17 this question.

18 BY MR. GIUFFRA:

19 Q You identify in your report 134,000 that  
20 comes from Madison conceivably, and then you have  
21 another 40,000 which gives you a grand total of a  
22 little bit over 170,000, so the large bulk of the

1 money that went into Whitewater would have been  
2 deposited by McDougal from Madison Guaranty sources?

3 A No, what you just said is almost totally  
4 wrong.

5 Q Well, correct me, then.

6 A It's hard to know where to start. Let me  
7 try.

8 Q Let me get it wrong now than on Friday.

9 A Okay, that sounds good.

10 MR. COLE: There's nothing that says he  
11 won't get it wrong twice, Mr. Ericson.

12 THE WITNESS: Well, we can only do our  
13 best. We looked at all deposits into Whitewater from  
14 whatever source and attempted to determine the  
15 source. A lot of the deposits were from sources that  
16 I think everyone would agree would be acceptable.  
17 For example, payments by people who bought lots.  
18 Jones or Smith buys a monthly payment, that money  
19 comes in, no problem about that. In the total sum of  
20 deposits, I forget, but it's on the order of 7- or  
21 \$800,000, and it's shown by one of the charts.

22 Of that total, the 13,194 represents money

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1 that came into Whitewater that looked like it might  
2 have come from Madison Guaranty in whole or in part,  
3 and the attempt was made to see could that money be  
4 traced back to Madison Guaranty.

5 Now, the other amount that you referred to  
6 is \$40,000 and you mean, of course, the \$39,474  
7 referred to at the bottom of the page is the money  
8 that went into the Whitewater account for which we  
9 simply could not determine the source.

10 And let me explain that a little further.  
11 What we typically find would be a deposit slip and a  
12 monthly statement that would confirm the deposit.  
13 Sometimes with a deposit slip, you would have some  
14 indication of the source, and you might even actually  
15 have the deposit item on the microfilm, a check or  
16 whatever. Sometimes, however, you'd simply see a  
17 deposit slip that would show a deposit of X dollars,  
18 and there would be no indication as to the source.  
19 You wouldn't find any item in that amount or items  
20 that added up to that amount such that you could  
21 determine the source of that deposit. The sum of  
22 such deposits that couldn't be traced was \$39,474.

1 Does that help?

2 BY MR. GIUFFRA:

3 Q If Mr. McDougal had made a loan to a real  
4 estate project that he was involved in for Madison,  
5 and then the real estate project went around and  
6 wrote a check to Mr. McDougal and then Mr. McDougal  
7 made a deposit into the Whitewater account, how would  
8 that be treated?

9 A That's the sort of thing we would have  
10 traced.

11 MR. COLE: And you would have found that  
12 sort of thing, would you not, Mr. Ericson?

13 MR. GIUFFRA: Let's find out. Let him  
14 answer the question.

15 THE WITNESS: I think we didn't find that  
16 sort of thing and we described a number of  
17 transactions that are fairly close to that type.

18 BY MR. GIUFFRA:

19 Q Was there any requirement that such  
20 transactions be close in time in order that they  
21 could be connected? If the transactions were spread  
22 out over a several week or month period, would it

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1 have been possible for you to have traced them from  
2 Madison to Whitewater?

3 A Yes, and I would point out that the  
4 transactions -- I'll get the number here -- the one  
5 that spread out over the longest period of time is --  
6 I'm looking for it. The transaction reflected by  
7 chart 12 and 12A, which was spread out more than over  
8 a year. With the exception of that one, generally  
9 speaking, the transactions we traced were generally  
10 ones where the transactions were spread out over a  
11 few weeks or possibly a month or two and not longer.

12 Q But what is the likelihood that some of the  
13 \$40,000 would consist of transactions where  
14 Mr. McDougal was able to make deposits, basically to  
15 launder money through Madison through various  
16 McDougal entities and back into Whitewater?

17 A I really can't put a probability on that.  
18 All I can say about that amount of \$39,474 is we  
19 don't know the source of those deposits.

20 Q So conceivably, it could have been Madison  
21 Guaranty -- somewhere between --

22 A Conceivably, it could have come by some



1 indirect path from Madison Guaranty. We simply don't  
2 know the source of the money.

3 Q Now, with regard to the fungibility of  
4 money, the thing that's identified in the second page  
5 of the Whitewater report, are there any additional  
6 ways that your report is limited because your money  
7 is fungible stated on page 2?

8 A Page 2 I think you mean of the preliminary  
9 report?

10 Q Correct.

11 A I can't think of any offhand. We know that  
12 this qualification is the way we phrased it, and it  
13 is an important point to know, but I think we've  
14 covered it there.

15 Q On the third page you identify instances in  
16 which documents and records -- strike that.

17 You say the fact that records are  
18 incomplete was a limitation in your analysis. Do you  
19 see that?

20 A Yes, top of page 3.

21 Q To what extent, other than as stated in the  
22 report, was your analysis limited by the fact that

1 records were incomplete?

2 A I think we've noted anything of a material  
3 nature in the report.

4 Q Can you recall any instances in which  
5 important records were missing that you would have  
6 liked to have had other than those specified in the  
7 report?

8 A No.

9 Q Now, I'd like to focus on the third  
10 limitation.

11 A Yes.

12 Q In order to determine the purpose of a  
13 transaction, you often need to speak to a witness;  
14 right?

15 A I think that's sometimes true, yes.

16 Q And particularly, when you're dealing with  
17 someone like Mr. McDougal who's shifting money among  
18 various entities that he controls?

19 A I stand by my previous answer. I'm not  
20 sure that affects it one way or another, but I would  
21 agree it's sometimes useful to talk to witnesses  
22 about the purpose of a transaction, certainly.

1 Q And in this particular case, because you  
2 were not able to speak to Mr. McDougal, and he was  
3 the person who was the decisionmaker with regard to  
4 the vast majority of these transactions, you had to  
5 rely on the documentary trail in order to ascertain  
6 what the business purpose of the transaction was?

7 A Well, not entirely. We certainly placed  
8 reliance on documents. We've indicated that, but at  
9 least with respect to some transactions, we were able  
10 to talk to witnesses. I have in mind R.D. Randolph.  
11 I talked -- Mr. Patterson interviewed R.D. Randolph  
12 once and deposed him once. The deposition was  
13 largely on topics related to Whitewater. I also have  
14 in mind Greg Young. I spoke several times about  
15 topics related to Whitewater. There may be others,  
16 as identified in the supplemental report on  
17 Whitewater, but those two come to mind.

18 Q Now, with regard to the question of whether  
19 the Clintons had knowledge of the fact they were  
20 being carried by McDougal, did you have any  
21 discussions about that subject with anyone at the  
22 RTC?

1 A Oh, I'm sure I did.

2 Q Was that an important focus of the --

3 MR. COLE: I'm sorry, the way you phrased  
4 your question, with regard to the fact the Clintons  
5 had knowledge that they were carried by McDougal --

6 MR. GIUFFRA: With regard to whether.

7 THE WITNESS: Whether. I would definitely  
8 put it in whether.

9 MR. COLE: That's more consistent with the  
10 findings in the Pillsbury reports.

11 THE WITNESS: And let me say that I missed  
12 that. But certainly, our discussions were along the  
13 lines of whether they had knowledge, if one asserted  
14 they did have knowledge.

15 BY MR. GIUFFRA:

16 Q You drew the conclusion in your report  
17 there was no evidence the Clintons had knowledge;  
18 right?

19 A I think you may be putting it a little more  
20 strongly than I would, but that's fairly close to the  
21 mark, yes.

22 MR. COLE: My recollection it was more like

1 the evidence was insufficient to establish the  
2 Clintons had knowledge, but it's late in the day to  
3 be quibbling over the day.

4 THE WITNESS: The report says what it says,  
5 but I assume this is the preface to something else  
6 and you're just focusing me on a topic.

7 BY MR. GIUFFRA:

8 Q Now, you would agree that the Clintons  
9 received information during the early 1980s with  
10 regard to principal reductions on their loans, on the  
11 Whitewater loans?

12 A Do I recall -- I have trouble answering  
13 because, A, I'm not sure I recall. And B, you  
14 haven't pointed me to any specific deduction or  
15 transaction, and I'm a little concerned about what I  
16 think is the compound nature of the question.

17 Q You would agree that the Clintons were  
18 potentially obligated to pay back loans totally close  
19 to \$200,000 at least the outset of the transaction;  
20 right?

21 A Potentially or intentionally?

22 Q Potentially.

1 A Yes. At least the major loan was a  
2 recourse loan.

3 Q Both loans were recourse loans?

4 A The Citizens Bank of -- the major loan was  
5 a recourse loan.

6 Q And so was the down payment loan?

7 A I think so, yes.

8 Q And they were joint and severally liable  
9 with regard to both loans along with the McDougals?

10 MR. COLE: It's a technicality, but --

11 THE WITNESS: That's not quite right.

12 MR. COLE: Only Mr. Clinton and

13 Mr. McDougal were liable on the --

14 MR. GIUFFRA: On the first loan.

15 MR. COLE: The Union Bank loan, but it's a  
16 technicality.

17 BY MR. GIUFFRA:

18 Q Would you agree in 1978 commercial  
19 financing of no equity raw land acquisitions was  
20 fairly unusual?

21 MR. GUTKIN: Lacks foundation.

22 MR. GIUFFRA: Let the objection stand. Do

1 you want to reread the question?

2 THE WITNESS: Yes, please. Read it back.

3 Read.

4 BY MR. GIUFFRA:

5 Q Would you agree that in 1978, commercial  
6 bank financing of no equity raw land acquisitions was  
7 fairly unusual?

8 MR. COLE: In Arkansas?

9 MR. GIUFFRA: No limitation.

10 MR. COLE: Because we have testimony from  
11 bankers in Arkansas that it was not, but --

12 MR. GIUFFRA: Are you testifying?

13 MR. COLE: If you want to ask the  
14 question.

15 THE WITNESS: Let me answer it this way.  
16 I'm not sure I have much expertise with that. I can  
17 give you my impression, which is that it was more  
18 unusual in 1978 than it became in the early to late  
19 part of the 1980s. On the absolute scale, was it  
20 unusual, a little unusual? I'm not qualified to say.

21 BY MR. GIUFFRA:

22 Q Do you recall in one of your preliminary

1 drafts, the November 4, '94 draft writing "this sort  
2 of financing of raw land deals became common in the  
3 '80s, but in 1978 commercial bank financing of no  
4 equity raw land acquisitions was fairly unusual"?

5 A Do I recall writing that?

6 Q Yes.

7 A Rings a faint bell, but I don't have any  
8 recollection.

9 Q Would you agree with that statement  
10 contained in your draft?

11 MR. COLE: Was that a statement that was  
12 contained in the draft and is not in the final  
13 report?

14 MR. GIUFFRA: Yes.

15 THE WITNESS: Is it?

16 MR. COLE: He said yes to that.

17 THE WITNESS: To the best of my  
18 recollection, and my recollection is fairly faint, I  
19 took that out of later drafts of the final for  
20 exactly the reasons I've just indicated, which is  
21 that I didn't really feel I had adequate foundation  
22 to say that.



1 MR. COLE: I think that was prudent since  
2 Frank Burge testified before this Committee that in  
3 northern Arkansas in the late 1970s, his bank at  
4 least commonly made such loans. So I think that was  
5 prudent editing, Mr. Ericson.

6 THE WITNESS: Prudent or not, that's what I  
7 did.

8 MR. GIUFFRA: Mr. Cole is testifying here.  
9 We'll put him under oath as well.

10 MR. COLE: I'm noting the testimony of  
11 another witness.

12 MR. GIUFFRA: He's from Arkansas so he has  
13 a certain amount of expertise that no one else on the  
14 call may have.

15 MR. COLE: That may be an area that I have  
16 expertise in in which no one else on the call may  
17 have.

18 BY MR. GIUFFRA:

19 Q Now, your report on page 5 of the  
20 preliminary report states that the Clintons had  
21 little direct involvement in Whitewater's financial  
22 management until 1988. Do you see that?

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1 A Page 5 -- which paragraph?

2 Q Paragraph 5.

3 A You've left out a little bit. It says "the  
4 evidence also suggests that the Clintons had little  
5 direct involvement."

6 Yes, I do see that.

7 Q Are you aware of evidence indicating that  
8 the Clintons became involved in financial management  
9 of Whitewater beginning in 1987?

10 A '87 -- I don't have any recollection of  
11 that. You're contrasting 1987 with 1988, I guess.  
12 1988 is what sticks in my mind, but -- let me put it  
13 this way. I don't think it was entirely like a light  
14 switch that is either on or it's off, that suddenly  
15 it went from no involvement to large involvement. It  
16 may be that it ramped up over time, but I don't have  
17 any recollection of much in 1987.

18 The only other thing I would note is that  
19 by 1987, McDougal had been essentially thrown out of  
20 Madison Guaranty. So for our purposes, it happened  
21 in 1987 -- or really after July of 1986 we were much  
22 less likely to be fruitful.

1 Q Did McDougal have any role with regard to  
2 the financial management of Whitewater after 1986?

3 A I'm reluctant to say he had no role because  
4 I'm not sure I recall, but to the best of my  
5 recollection, his role was quite minimal. He had a  
6 nervous breakdown. He was hospitalized. He left  
7 Arkansas. To some extent, I disappeared so far as  
8 many people were concerned, and I think for a number  
9 of years in the late 1980s, he was barely  
10 incommunicado.

11 Q Would you agree from 1987 until 1992, the  
12 primary -- or with regard to running Whitewater, it  
13 was handled by the Clintons?

14 MR. GUTKIN: '87 to '92?

15 MR. GIUFFRA: Yes.

16 THE WITNESS: You said '82, but clearly you  
17 meant '92.

18 MR. GIUFFRA: I'm sorry. I'll rephrase the  
19 question.

20 BY MR. GIUFFRA:

21 Q Between 1987 and 1992, am I correct that  
22 the Clintons were responsible for the financial

1 management of Whitewater?

2 A I'm not sure it's entirely correct, and let  
3 me explain. Chris Wade handled a number of matters.  
4 Certain accountants might have handled a number of  
5 matters. Certainly Mrs. Clinton -- I wouldn't say  
6 the Clintons, but I would say Mrs. Clinton handled a  
7 number of matters in that period, and certainly from  
8 1988 onward had a significant role with respect to  
9 the management of Whitewater's affairs. But I don't  
10 know that I would say that she was the primary or  
11 principal person.

12 Q Do you know someone else who was the  
13 primary principal person between 1988 and 1992?

14 A I'm sure if any one person was that. I  
15 really can't improve on my last answer.

16 Q Your view that between 1978 and either 1986  
17 or 1987, the financial management of Whitewater was  
18 handled virtually solely by the McDougals; is that  
19 right?

20 A Could you read that back. There's  
21 something about the way you phrased it that seems  
22 wrong, but would you read back the question.

1 (The reporter read the record as requested.)

2 THE WITNESS: "Virtually solely" is a  
3 little strong. I would say it was handled primarily  
4 by Jim McDougal, certainly Charles played a role.  
5 Certainly Chris Wade played a role, more of a sales  
6 role than a financial management role, if that's a  
7 distinction. But with those caveats, I'd say that's  
8 reasonably accurate.

9 BY MR. GIUFFRA:

10 Q And how would you describe the Clintons'  
11 role between 1978 and either '86 or '87?

12 A I don't think I can improve on what I said  
13 in the report which is along the lines of -- as far  
14 as we could tell from the evidence, they had fairly  
15 minimal knowledge of the financial situation when  
16 they were called upon to make payments they did. But  
17 that's extemporizing, if you will, and I'm sure I  
18 prefer the way I put it in the report.

19 Q Are you aware of the legal doctrine known  
20 as conscious avoidance?

21 A I may have heard it, but I certainly cannot  
22 give you a very good definition.

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1 Q Proof of knowledge can be found if someone  
2 consciously avoids learning a particular fact?

3 A Again, that's something I may have heard  
4 of, but I'm not conversant on that.

5 MR. COLE: Don't feel badly. It has  
6 virtually no application to what we're talking about  
7 now.

8 MR. GIUFFRA: Really? We can put you under  
9 oath, Mr. Cole.

10 MR. COLE: I'll state my opinion. Having  
11 some familiarity with the doctrine of conscious  
12 avoidance in the criminal law, I think I can state  
13 that with some confidence.

14 BY MR. GIUFFRA:

15 Q You're not aware of the doctrine conscious  
16 avoidance, Mr. Ericson?

17 A As I've already indicated, I think I heard  
18 the term, but I know little about it.

19 Q Does it have any applicability in civil  
20 litigation, so far as you know?

21 A I have no idea.

22 Q Did you do any research into whether

1 conscious avoidance might apply in a civil context?

2 A No, I did not.

3 Q Now, with regard to the handling of  
4 Whitewater between 1978 and 1986 or 1987, if the  
5 Clintons consciously avoided asking questions that  
6 someone who was obligated on notes exceeding \$100,000  
7 might normally have, couldn't that be evidence of  
8 knowledge on their part of the fact they were being  
9 carried by Mr. McDougal?

10 MR. GUTKIN: Lacks foundation.

11 THE WITNESS: I'm not able to answer that  
12 question.

13 BY MR. GIUFFRA:

14 Q Why can't you answer the question?

15 A I think for the reasons I've already  
16 explained.

17 Q You did not do any analysis of the fact --  
18 strike that.

19 When we spoke to Mr. Stephens this  
20 afternoon, he indicated he had been critical of the  
21 fact that the draft assumed that it was a perfectly  
22 normal way for a business transaction to occur; i.e.,

1 that one partner would put in over \$150,000 and the  
2 other partner would put in \$34,000, notwithstanding  
3 the fact they would each receive 50 percent of the  
4 benefit.

5 MR. GUTKIN: Misstates testimony.

6 BY MR. GIUFFRA:

7 Q Now, did your report take into account that  
8 that was not a normal way for most people to engage  
9 in a business transaction?

10 A This is a somewhat convoluted question.  
11 Let me see if I can parse it for you. To start with,  
12 the predicate of your question, if the report said  
13 this was normal, I don't think that's true.

14 Q So you would agree it would not be normal  
15 in a business transaction where there's 50/50  
16 partners, for one partner to pay a disproportionate  
17 amount into the investment?

18 A No, I didn't say that. I said the report  
19 did not say it was normal. I think it said it was  
20 abnormal. I can think of plenty of situations in  
21 which partners put in amounts that differ from their  
22 equity interests, but the report doesn't say what



1 you're suggesting it says.

2 Q Could you give us examples of cases in  
3 which 50/50 partners -- in which one partner might  
4 put in more than another partner?

5 A I don't know if I can give you an example  
6 that's a 50/50 partner. Often, in situations for  
7 businesses, I understand it. The monetary  
8 contribution of the organizers or promoters or  
9 whatever is far less than the monetary contribution  
10 of others who invest in the business, in that their  
11 monitored contributions are wildly different than the  
12 equity they receive in the enterprise. That, I  
13 think, is fairly commonplace in business.

14 Q But in this particular case, wasn't  
15 Mr. McDougal the organizer of the business  
16 enterprise?

17 A I think that's a fair statement, yes.

18 Q And wasn't Mr. McDougal also the person who  
19 was -- at least according to your report, between '78  
20 and '86 -- primarily responsible for managing the  
21 business enterprise?

22 A I think that's a fair statement also.

1 Q So what were the Clintons providing to the  
2 McDougals that would have justified the McDougals --

3 A Is somebody vacuuming there?

4 MR. GUTKIN: Yes, it's in our office in  
5 D.C.

6 THE WITNESS: I keep hearing this vacuuming  
7 noise and I hope you all don't get sucked up into the  
8 vacuum cleaner.

9 MR. COLE: We have to be careful with this  
10 Committee with the use of the word "vacuum."

11 THE WITNESS: I've tried in some --

12 MR. GIUFFRA: Let's get back to work here.

13 BY MR. GIUFFRA:

14 Q Based on your examination of the evidence,  
15 what were the Clintons putting into the investment of  
16 a nonmonetary nature that explains the fact that the  
17 McDougals, who are 50/50 partners, were putting in a  
18 disproportionate amount of the funds?

19 A I'm sorry. I didn't get that question at  
20 all.

21 MR. GUTKIN: I didn't follow it.

22 BY MR. GIUFFRA:

1 Q You would agree that the Clintons and  
2 McDougals were 50/50 partners; right -- we'll break  
3 it up.

4 They were 50/50 partners; right?

5 A They weren't partners; they were  
6 shareholders. The best evidence is that they  
7 intended each to have a 50 percent interest in the  
8 corporation, although as we pointed out in the  
9 report, there's also evidence to the contrary. But  
10 the Clintons' indication and the documentary evidence  
11 is that they intended each to have 50 percent of the  
12 equity in the corporation.

13 Q And your report concludes that the  
14 McDougals, or their controlled entities, advanced  
15 \$158,000 and the Clintons advanced \$35,000?

16 A I'm not sure those are the exact numbers  
17 but certainly along those lines, yes.

18 Q Are you aware from the evidence of any  
19 nonmonetary contribution that the Clintons provided  
20 to the Whitewater investment that would have  
21 explained the fact that the McDougals put in a  
22 disproportionate amount of the money into the

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1 investment?

2 A No.

3 MR. GUTKIN: That's a compound question,  
4 but you answered it.

5 THE WITNESS: I guess I jumped on the  
6 objection, but no, I'm not aware.

7 BY MR. GIUFFRA:

8 Q Did you attempt to investigate whether  
9 there were any nonmonetary contributions by the  
10 Clintons to the McDougals that might explain the fact  
11 that the McDougals made contributions that exceeded  
12 the contributions of the Clintons in the investment?

13 MR. GUTKIN: Same objection. Also vague  
14 and ambiguous.

15 THE WITNESS: Subject to those actions, let  
16 me try and answer. Certainly we're on the lookout of  
17 anything of that sort. I don't recall seeing  
18 anything of that sort.

19 BY MR. GIUFFRA:

20 Q You would have been on the lookout for an  
21 example of evidence that Governor Clinton had  
22 provided benefits to Jim McDougal by virtue of the

1 fact that he was governor of the state of Arkansas?

2 A I certainly would have been interested in  
3 such a thing and would have been in my parlance on  
4 the lookout for such a thing, yes.

5 Q Would you consider such evidence important  
6 to your inquiry with regard to whether the Clintons  
7 had knowledge of the fact that the McDougal entities  
8 were carrying the transaction?

9 A As you phrased it, I don't think so, but I  
10 would have considered it important for other reasons.

11 Q For what reasons?

12 A It would be interesting in and of itself.  
13 But the way you've linked the -- the referring of  
14 such benefits with the payment of money, the way you  
15 put it just didn't seem to me all together. But it  
16 would have been, as I say, interesting.

17 Q Why would such evidence have been  
18 interesting?

19 A Put some light on the relationship of the  
20 Clintons and the McDougals and led to something  
21 actionable. I don't know beyond that.

22 Q So is it possible that if you were --

1 A Let me interrupt you first, if I might. I  
2 realize the hour is late and you're probably tired.  
3 I think that you seem to be laboring hard to get at  
4 something that maybe I can just sort of help you out  
5 with, if I might.

6 Q Go ahead. Answer the question.

7 A With regard to the fact that the McDougals  
8 contributed far more money to Whitewater than did the  
9 Clintons, we did not mean to suggest, and I think did  
10 not suggest in the report, that that was -- how  
11 should I phrase it --

12 Q Normal business?

13 A As I've already explained it, it was not so  
14 much abnormal, but we certainly took it as something  
15 that warranted further investigation and attempted to  
16 investigate it further. And it raised questions in  
17 our mind and we attempted to look into that. Does  
18 that help?

19 Let me put it more bluntly. We weren't  
20 blessing that.

21 Q And you're not blessing that now?

22 A We're not blessing that. I'm not saying

1 that it's wrongful or it shows that there's a claim  
2 against anybody. I'm certainly not saying that, but  
3 I'm not blessing it.

4 BY MR. COLE:

5 Q But you certainly did not ignore it when  
6 you were undertaking your investigation and analysis?

7 A No, of course not.

8 BY MR. GIUFFRA:

9 Q If you had identified evidence indicating  
10 that Governor Clinton, by virtue of the fact he was  
11 governor of the state of Arkansas, provided benefits  
12 to Jim McDougal, would that have been evidence you  
13 would have wanted to consider in determining whether  
14 you might have a claim against the Clintons?

15 A I think the answer is yes.

16 MR. COLE: It's a purely hypothetical  
17 question, of course, since after a year of hearings  
18 in this Committee that has not been established.

19 THE WITNESS: Hypothetical question --  
20 whatever it's worth, I gave you an answer to your  
21 hypothetical.

22 BY MR. GIUFFRA:

1 Q Did you conduct any interviews or do any  
2 investigation relating to the question of whether  
3 Madison Guaranty office space was leased to the  
4 Arkansas Development Finance Authority as a result of  
5 the intervention of Governor Clinton?

6 A Did I? No.

7 Q Did anyone at Pillsbury?

8 A Don't know.

9 Q Did Pillsbury look into whether Governor  
10 Clinton intervened with regard to certain health  
11 related inspections that were going on at a McDougal  
12 real estate development?

13 MR. GUTKIN: Again, I would object to the  
14 extent you're asking for "did Pillsbury." Obviously,  
15 the witness can speak to his knowledge, not only of  
16 what he did but what others did, but beyond that  
17 there's a limitation on the question.

18 THE WITNESS: If what you're alluding to is  
19 Maple Creek, I would say that the general subject  
20 you've mentioned is mentioned and discussed in, I  
21 believe, the preliminary report on Whitewater. And  
22 to that extent, we went into it.



1 BY MR. GIUFFRA:

2 Q And by that, you mean whether the governor  
3 had intervened on McDougal's behalf with the state  
4 health department with regard to some sewage  
5 treatment deficiencies at that development?

6 A Yes.

7 Q So you fully investigated that allegation?

8 A That's not what I said.

9 Q Did you investigate it or did you not  
10 investigate it or did you sort of half investigate  
11 it?

12 A I said it was discussed in the preliminary  
13 report, and we looked at some evidence concerning  
14 that. It was not immediately pertinent to anything I  
15 was doing, so I didn't take it beyond the discussion  
16 that's in the preliminary report, but I looked at  
17 some evidence in that regard, and it's noted in the  
18 report.

19 Q Did you look into any evidence -- strike  
20 that.

21 Did you investigate whether at McDougal's  
22 behest Governor Clinton appointed John Latham,

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1 Madison Guaranty's president, to the state savings  
2 and loan commission?

3 A I myself did not undertake any  
4 investigation with respect to that. I can't speak  
5 for the others.

6 Q Did anyone at Pillsbury --

7 A I just said I can't speak for the others.

8 Q I'm sorry. I apologize. It's late. 9:30  
9 our time.

10 MR. GUTKIN: Do you have any idea how much  
11 longer? Any idea on the estimate?

12 MR. GIUFFRA: Probably not that much  
13 longer.

14 THE WITNESS: In fact, if we're going to be  
15 more than a few minutes, I would like to take a short  
16 break for the usual reasons, if I could.

17 MR. GIUFFRA: Why don't we go five more  
18 minutes and we'll take a break.

19 BY MR. GIUFFRA:

20 Q Did you investigate whether Governor  
21 Clinton appointed Beverly Bassett Schaffer Arkansas's  
22 top S&L regulator as a result of her recommendation

1 by McDougal?

2 A I didn't investigate that as such. I am  
3 aware of some testimony before your committee to that  
4 effect, and I may have cited that in one way or  
5 another, but I didn't myself do anything above and  
6 beyond read the testimony before your committee with  
7 respect to that.

8 Q Did you look into the question of whether  
9 Governor Clinton or his appointees were lax in their  
10 regulation of Madison Guaranty and its possible  
11 connection to the Whitewater investment?

12 A Yes, to some extent, we did look at that,  
13 yes.

14 Q And to what extent did you look at that  
15 issue?

16 A The extent that it's discussed in the two  
17 reports on the Rose Law Firm.

18 Q Now, those reports would have been  
19 completed after the Whitewater reports; am I right?

20 A Yes.

21 Q But you took it into account in drafting  
22 the Whitewater reports -- you took into account what

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1 you had learned in drafting the Whitewater reports,  
2 or was this something you learned after the  
3 Whitewater reports were finalized?

4 A No. I was familiar with this issue no  
5 later than the middle of 1995, which would be after  
6 the preliminary report on Whitewater was finalized,  
7 but before the supplemental was finalized.

8 Q Did you discuss with anyone at the RTC the  
9 issue of whether you should investigate possible  
10 favors that were done by Governor Clinton or his  
11 Administration for Jim McDougal in --

12 A I can't say that I did not, but I don't  
13 have in mind any particular conversations on that  
14 subject.

15 Q To what extent -- strike that.

16 You would agree that the primary focus --

17 A One thing I should add is you have to bear  
18 in mind that our focus is on wrongful conduct and the  
19 intentional -- fraud or intentional misconduct that  
20 resulted in monetary damage to Madison Guaranty. The  
21 RTC sues to make money, and so we're focused on  
22 things that might have a monetary impact, and that

1 has to be borne in mind in considering all this.

2 Q So you were not investigating whether there  
3 was anything improper or -- strike that.

4 You were not investigating whether there  
5 was anything unethical about the relationship between  
6 Governor Clinton and Jim McDougal?

7 A I'm uncomfortable with the breadth of that  
8 question. I mean, our interest, as I stated, would  
9 be whether anybody committed fraud or intentional  
10 misconduct that resulted in monetary damage to  
11 Madison Guaranty. I would not turn a blind eye to  
12 other matters, but unless they seem to lead towards  
13 something that would be actionable, it wouldn't be  
14 something that would be pursued.

15 Q Did you identify anything in the course of  
16 your investigation indicating that there might be  
17 anything unethical with regard to the relationship  
18 between Jim McDougal and Governor Clinton?

19 A Unethical about the relationship?

20 Q Yes.

21 A I can't recall anything of that nature.

22 Q Did the evidence lead you to conclude

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1 there's an entirely above-board relationship between  
2 Governor Clinton and Jim McDougal?

3 A I think as I previously testified, our  
4 conclusions were not of an exonerating nature. We  
5 concluded there were not cost-effective claims to be  
6 brought, but we were not focused on exonerating  
7 anybody from anything.

8 Q In the Whitewater report, your focus is on  
9 the money flows and the accounting issues; right?

10 A That's the principal focus, I'd say, yes.

11 Q To what extent -- strike that.

12 Would it be fair to say you had only a very  
13 limited focus on whether Governor Clinton had  
14 performed favors for Jim McDougal in exchange for the  
15 fact that McDougal was carrying the Whitewater  
16 investment?

17 A I'm not sure I can improve on my previous  
18 answers about that. It's the sort of thing that  
19 might lead to relevant evidence, and so you keep an  
20 eye out for it. It's not the principal focus of the  
21 investigation.

22 Q Was it a large focus, a minor focus --

1 strike that. Let me rephrase the question.

2 Did you conduct any depositions or conduct  
3 any interviews directed at ascertaining whether  
4 Governor Clinton performed any favors for Jim  
5 McDougal?

6 A I didn't. I can't speak for the others.

7 MR. GIUFFRA: Why don't we take a break for  
8 five minutes.

9 THE WITNESS: Okay. I'm going to put down  
10 the phone and run down the hall and --

11 MR. GIUFFRA: We'll keep the line open.

12 THE WITNESS: And I'll be back.

13 (Recess.)

14 BY MR. GIUFFRA:

15 Q Mr. Ericson --

16 MR. GUTKIN: Bruce, are you back?

17 MR. COLE: I don't think we have a witness  
18 yet.

19 (Pause.)

20 BY MR. GIUFFRA:

21 Q Now, you did not look at personal --

22 A Are we on the record here?

1 Q We're back on the record.

2 A Okay.

3 Q You did not look at personal tax issues in  
4 connection with your report; right?

5 A I think we so stated in the report. I  
6 looked at tax returns, but we did not look at tax  
7 issues as such.

8 Q Did you identify any instances in which it  
9 appeared that the Clintons had taken improper  
10 deductions?

11 A I can't remember whether or not we did.  
12 There may be some reference to something like that in  
13 the preliminary report, but I'm just not sure. In  
14 any event, it was not focused because we looked at it  
15 the RTC would not have any standing to bring a  
16 lawsuit and make any money based on any problem with  
17 their tax returns.

18 Q Might evidence that their tax returns  
19 contained errors in any way be relevant to your  
20 inquiry with regard to whether the Clintons were  
21 aware of the fact that they were being carried by  
22 McDougal?



1 A Well, I can't say that it would in no way  
2 be relevant, but to the extent -- we looked at the  
3 tax returns. We looked at what they would tell us or  
4 not tell us about issues such as that in which we had  
5 an interest, and I -- to the extent they had any  
6 relevance, I think they cut the other way.

7 Q In your supplemental Whitewater report on  
8 the question of the Clintons' knowledge, what's the  
9 important evidence that you rely upon to conclude  
10 that there's no evidence that the Clintons were aware  
11 of the fact that they were being carried by McDougal?

12 MR. GUTKIN: That's kind of overbroad,  
13 particularly given the late hour.

14 MR. GIUFFRA: I'll rephrase it.

15 BY MR. GIUFFRA:

16 Q You conclude in your report there was no  
17 evidence that the Clintons knew about the various  
18 transactions by which McDougal deposited money into  
19 Whitewater; right?

20 A I'm not sure that's exactly the way we put  
21 it, but the hour is late, so I won't quibble. I  
22 mean, the report speaks for itself.

1 Q Now, in the supplemental report, would it  
2 be fair to say you relied heavily on the  
3 interrogatories you obtained from the Clintons'  
4 counsel, Mr. Kendall, on the question of whether the  
5 Clintons had knowledge of the transactions that  
6 McDougal engaged in that benefited Whitewater?

7 A I don't know that I'd say we relied  
8 heavily. I can't really cite from them and quote  
9 from them extensively and present them, but with  
10 respect to an issue like that where there's obviously  
11 a clear question of self-interest and so on, other  
12 evidence, particularly the documentary evidence would  
13 probably ultimately be of equal or more importance to  
14 me.

15 Q Now, in your report -- let's turn to page  
16 45 of the supplemental.

17 A Okay.

18 Q You indicate that in the preliminary report  
19 you didn't say very much about the Clintons'  
20 knowledge because at the time little was known. Do  
21 you see that, the second full paragraph?

22 A Yes.

1 Q And then you say "since then, however,  
2 additional information has been obtained: The  
3 Clintons' interrogatory responses, additional  
4 documents received from the Clintons' counsel, David  
5 Kendall, and documents mentioning Kendall received  
6 from the White House" -- and I'm paraphrasing. Do  
7 you see that?

8 A Yes. You are paraphrasing, but that's  
9 fine. Go on.

10 Q In the next paragraph you say "the  
11 Clintons' interrogatory responses provide  
12 considerable new information about their expectations  
13 and their approach to their investment in  
14 Whitewater." Do you see that?

15 A Yes, I see that.

16 Q Of the new evidence you obtained between  
17 the preliminary report and the supplemental report,  
18 am I not correct that the most important new evidence  
19 you obtained was the interrogatory responses?

20 A Sure. We got into this last time. Is  
21 evidence A any more important than evidence B? I  
22 don't really think along those lines typically. I

1 try to look at all the evidence and judge it and so  
2 on, and it's not as though there's a hierarchy of it  
3 in my mind that this is important and this is second  
4 and so on. I don't think in those terms.

5 Q You would agree looking at the case, not  
6 all evidence is the same. Some evidence has greater  
7 probative value than others?

8 A Certainly that's true, yes.

9 Q So in this portion of your report, am I not  
10 correct that the evidence that you thought had the  
11 most probative value were the Clintons' interrogatory  
12 responses -- let me restate the question.

13 Of the new evidence you obtained between  
14 the preliminary report and the supplemental report,  
15 am I not correct that the interrogatory responses  
16 were the new evidence of most probative value?

17 A With respect to the issue of the Clintons'  
18 knowledge?

19 Q Yes.

20 A I'm not sure. I'll have to think about it  
21 for a minute and flip through the report.

22 Q Okay. Take your time.

1 A I would say that the interrogatory answers  
2 were, I think, the most important single piece of new  
3 evidence on that subject, yes.

4 Q I mean, the documents we got from  
5 Mr. Foster's office, were they of much probative  
6 value?

7 A I think they were from Mr. Kendall's office  
8 but they related to Foster. No. Those particular  
9 documents were of very little value.

10 Q And of the other documents you obtained  
11 from Mr. Kendall in May '95 -- strike that.

12 You obtained other documents in May '95  
13 from Mr. Kendall; right?

14 A Yes.

15 Q Were any of those documents of any  
16 importance?

17 A I won't say that none of them were of any  
18 importance, but I don't remember anything that was  
19 particularly noteworthy. They're discussed in this  
20 report, and it's not like I've committed it all to  
21 memory, but I don't remember anything in them being  
22 particularly noteworthy.

1 Q Now, documents that you had prior to late  
2 May '95, can you think of any documents of particular  
3 probative value on the question of the Clintons'  
4 knowledge?

5 A Well, yes, in this sense. I mean, we're  
6 talking about -- it's sort of proving a negative.  
7 The documents previously obtained from Kendall, the  
8 10 or so banker's boxes of documents had quite a bit  
9 of significance with respect to this.

10 Q Which documents in particular?

11 MR. GUTKIN: Which in the 10 boxes?

12 BY MR. GIUFFRA:

13 Q Were there any documents that were  
14 particularly important on the question of the  
15 Clintons' knowledge?

16 A Here's what I was getting at when I say  
17 proving a negative. It's what wasn't there as  
18 opposed to what was there that I think was  
19 significant on that issue. It's not much of anything  
20 that showed they had significant knowledge with  
21 respect to the issue at hand, which is, you know,  
22 McDougal's payments on behalf of Whitewater.

1 Q Weren't there documents that were provided  
2 to the Clintons indicating that the principal on  
3 these loans was going down?

4 A Again, I think we went over this earlier  
5 today. I can't say there were no such documents, but  
6 they didn't show very much.

7 Q Weren't there also documents indicating  
8 that the project was having trouble in terms of  
9 sales?

10 A I'm not sure that's a very fair way of  
11 putting it. There's some letter that's discussed in  
12 the report. There's one or more letters discussed in  
13 the report that, not sales, but as I recall, they  
14 were lulling rather than alarming in nature, lulling,  
15 l-u-l-l-i-n-g.

16 BY MR. COLE:

17 Q Including a letter from Mr. McDougal  
18 indicating that he hoped sales would pick up in the  
19 spring and be sufficient to cover the debt service,  
20 if I recall correctly one of the letters you quoted  
21 in your report, Mr. Ericson, which I take it is one  
22 of the letters you're referring to?

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1 A As I say, I think there was more than one,  
2 but they're mentioned in the report.

3 BY MR. GIUFFRA:

4 Q The primary new evidence, you would agree,  
5 are the interrogatory responses; right?

6 A By new evidence, we mean evidence received  
7 between the preliminary report and the supplemental  
8 report? And primary -- you mean with respect to the  
9 issue of the Clintons' knowledge of Whitewater's  
10 financing. With those qualifications which I'm sure  
11 you'll accept, I would say the primary new evidence  
12 in that sense is the Clintons' interrogatory  
13 responses, yes.

14 Q You would agree from your own experience  
15 that interrogatories are not as useful a form of  
16 evidence as taking a deposition of a witness; right?

17 MR. COLE: Haven't we covered this about  
18 three times?

19 MR. GIUFFRA: No, just with Mr. Patterson.  
20 I want to ask him.

21 THE WITNESS: Yes, you haven't done that  
22 with me. We discussed it in January in my interview,



1 but not on the record.

2 BY MR. GIUFFRA:

3 Q Have you reviewed Mr. Patterson's  
4 deposition, by the way?

5 A No, but I recall my own interview, which is  
6 what I'm talking about. I was going to say that in  
7 many respects, interrogatories are less satisfactory  
8 than depositions.

9 In the particular case of the Clintons, I  
10 indicated to you in January, I think, that the  
11 interrogatories allowed me to ask more questions and  
12 more detailed questions on -- where a lot of detail  
13 was necessary than I probably ever could have in an  
14 interview or deposition.

15 Q Why was that?

16 A I don't think I could have gotten that  
17 amount of time with the Clintons.

18 Q You subsequently were able to conduct an  
19 interview of Mrs. Clinton; correct?

20 A That's correct.

21 Q Were any time limitations placed on you in  
22 connection with that interview?

---

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1 A Not in so many words. When I discussed  
2 with Mr. Kendall the idea of having an interview of  
3 Mrs. Clinton, there was discussion of how long it  
4 would take, and I think it was implicit, if not  
5 explicit, that I couldn't have forever, but he never  
6 said you will have no more than this amount of time.

7 Q Was there any discussion of a particular  
8 amount of time?

9 A To this extent, I indicated that I thought  
10 I would take two, 2-1/2 hours.

11 Q Did you take two, 2-1/2 hours?

12 A I think I took a little longer than that.  
13 Not much longer.

14 Q Why were interrogatories typically less  
15 satisfactory than a deposition?

16 A Because you can't eyeball the witness, and  
17 because you can't so easily follow up. I'm sure  
18 there are other reasons, but those are the first two  
19 that come to mind.

20 Q Have you spoken to Mr. Patterson since your  
21 deposition?

22 A Yes.

1 Q Have you spoken to Mr. Patterson about the  
2 subjects that were covered in your deposition?

3 A We had discussions with counsel and  
4 Mr. Patterson that I believe would be privileged.

5 Q Between the three of you?

6 A Yes.

7 Q I have a concern I'd like to state on the  
8 record. Given that the same person is representing  
9 all the witnesses, and in particular, in view of the  
10 fact that Mr. Stephens's testimony may be to some  
11 extent at variance or critical -- strike that -- at  
12 variance with that of the other witnesses, I would  
13 ask counsel that the witnesses don't all get together  
14 and prepare in advance of the hearing.

15 MR. GUTKIN: If you're instructing me how  
16 I'm going to prepare my witnesses, I'll take it into  
17 consideration, but I'm going to prepare them as I see  
18 fit.

19 MR. COLE: Can I ask one or two questions  
20 now? Are you finished?

21 MR. GIUFFRA: No. Two minutes.

22 BY MR. GIUFFRA:

1 Q Did you attempt to obtain records  
2 indicating communications between Governor Clinton  
3 and Jim McDougal that were not Whitewater related on  
4 their face, for example, telephone messages and  
5 things like that?

6 A Well, I think the answer is yes in the  
7 sense that our subpoenas to Clintons, to McDougal and  
8 other potential witnesses were almost never limited  
9 to Whitewater as such, and we cast that as broadly as  
10 we thought we reasonably could.

11 Q Does your report make reference to  
12 telephone messages and the like indicating  
13 communications or possible communications between  
14 Governor Clinton and Jim McDougal?

15 A I don't recall whether it does or not. I  
16 certainly looked at that sort of evidence.

17 Q Wouldn't it be possible that -- strike  
18 that.

19 You were relying upon documentary  
20 communications between Governor Clinton and Jim  
21 McDougal on the question of knowledge; right?

22 A Not exclusively, but primarily, I think.

1 Q And you were relying on the Clintons'  
2 interrogatories?

3 A Yes, to some extent.

4 Q So your report does not foreclose the  
5 possibility that there could have been  
6 communications, oral communications between the  
7 Clintons and the McDougals with regard to payments  
8 that the McDougals were making on behalf of the  
9 Clintons in connection with Whitewater?

10 A I don't think it forecloses any  
11 possibility. We discussed the evidence we obtained,  
12 and we discuss it and analyze it and draw conclusions  
13 therefrom it. I don't know that we foreclosed any  
14 possibilities.

15 Q If there had been -- you would agree if  
16 there -- strike that.

17 You would agree that there is evidence  
18 indicating that Governor Clinton on occasion visited  
19 Mr. McDougal?

20 A There's evidence to that effect.

21 Q And there's also evidence that Mrs. Clinton  
22 spoke to Mr. McDougal and Mrs. McDougal?

1 A I've seen evidence to that effect, yes. I  
2 think it was fairly occasional.

3 Q Do you reference that in your report?

4 A I don't recall. I may.

5 Q You can't foreclose the possibility that  
6 during such communications, the Clintons and the  
7 McDougals discussed the status of the Whitewater  
8 investment?

9 A As I said, I don't know that I can  
10 foreclose any possibilities. We can only look at the  
11 evidence we have, and that's what we've done.

12 Q But that's a limitation on the state of the  
13 record. We don't know both sides of those  
14 communications; right?

15 A Limitation on any human endeavor, yes, it's  
16 a limitation.

17 Q Because you weren't able to speak to Jim  
18 McDougal about communications he had with the  
19 Clintons, or Susan McDougal about communications she  
20 had with the Clintons?

21 A As I previously testified, both of them  
22 took the Fifth.

1 Q Have you reviewed the testimony that  
2 President Clinton gave in the McDougal/Tucker trial?

3 A No, I haven't. Is it printed somewhere?  
4 I've had a lot to do lately and I haven't gotten to  
5 that yet.

6 MR. COLE: There's a transcript that's  
7 publicly available, if it's something you'd like to  
8 look at.

9 BY MR. GIUFFRA:

10 Q Did you have any evidence, with regard to  
11 the Whitewater phase of your investigation, that the  
12 Clintons may have behaved negligently?

13 MR. GUTKIN: Wasn't this asked and answered  
14 last session?

15 MR. GIUFFRA: I don't think so.

16 THE WITNESS: I have trouble with the  
17 question. Negligently toward whom? Analysis of  
18 negligence usually involves negligence of a duty to  
19 somebody. I'm not sure what you're getting at.

20 BY MR. COLE:

21 Q If you were able to proceed under a  
22 negligence theory with regard to possible claims

1 related to Whitewater, might you have been able to  
2 state a claim against the Clintons?

3 MR. GUTKIN: I think Mr. Ericson's question  
4 remains a good one. Negligence as to whom?

5 THE WITNESS: The only party we've  
6 represented is the RTC, a successor in interest to  
7 Madison Guaranty, and I offhand can't see how the  
8 Clintons would have had any duty to Madison Guaranty  
9 with respect to any aspect of Whitewater.

10 BY MR. GIUFFRA:

11 Q On the issue of whether Governor Clinton in  
12 any way pressured David Hale to make a \$300,000 loan  
13 to Susan McDougal, was that something you looked at  
14 in your report?

15 A Not really. That's mainly Mr. Patterson's  
16 work.

17 Q I don't recall seeing that in any of his  
18 reports.

19 A I think the subject of Hale and those loans  
20 and so on is of principal interest to him, and I  
21 think it's something which he has a fairly keen  
22 interest in. I can't help you with respect to your



1 recollections.

2 Q But he reports that he did work on the  
3 Castle Grande report, and I don't think there's a  
4 discussion about a Castle Grande report.

5 A It says what it says.

6 MR. GIUFFRA: I'm concluded, Mr. Ericson.  
7 I appreciate your indulgence.

8 THE WITNESS: My pleasure.

9 MR. COLE: It's very late, and so I think  
10 I'm going to save most of the questions that I have  
11 for the hearing on Friday.

12 BY MR. COLE:

13 Q I do have one or two questions,  
14 Mr. Ericson, that relate back to the line of  
15 questioning that Mr. Giuffra pursued with you about  
16 the role of Mr. Stephens in this engagement.

17 A Paper shuffling or something going on. I'm  
18 having a real hard time hearing.

19 MR. GIUFFRA: Sorry about that.

20 BY MR. COLE:

21 Q Focusing on the early time in 1994 in which  
22 the statute of limitations was extended and your firm

---

400

1 and the RTC knew that you would have adequate time to  
2 conduct a more thorough investigation, at that time,  
3 did you expect the investigation would be something  
4 that would take considerable resources from your firm  
5 in terms of the amount of lawyer time that would be  
6 involved?

7 A Yes.

8 Q And how large was your Washington, D.C.  
9 office at that time?

10 A I'm not sure exactly. The numbers there  
11 have changed from time to time, but to the best of my  
12 knowledge, with the caveat that it could well be not  
13 a very accurate recollection, I would say somewhere  
14 on the order of 25 lawyers.

15 Q And the principal office of your firm was  
16 at that time and is San Francisco; is that correct?  
17 Or by principal, I mean largest.

18 A I thank you very much for the rephrasing  
19 because that's an area of some sensitivity to my  
20 partners, but I would definitely say yes.

21 Q I was definitely referring to size, the  
22 largest.

7       A    I think you're quite right, that you should  
8   address that to Mr. Patterson.

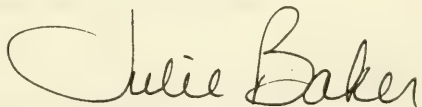
13 MR. GIUFFRA: Thank you very much.

16 (Whereupon, at 10:05 p.m., the deposition  
17 was concluded.)

21  
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the  
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

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July 5, 1996

Ms. Lori Conlon  
Committee on Banking, Housing, and Urban Affairs  
United States Senate  
534 Dirksen Senate Office Building  
Washington, D.C. 20510- 6075

Re: Public Access to Deposition Testimony Before the Senate  
Whitewater Committee - Deposition of Bruce A. Ericson,  
Volume 2, May 15, 1996

Dear Ms. Conlon:

I am writing in response to Robert Giuffra's letter to me of June 27, 1996. That letter enclosed my deposition transcript. It invited me to (1) delete personal information that I do not wish to have included in the public record and (2) correct errors in the transcript of my deposition.

*Personal information:* To the best of my recollection, I was not asked anything of a personal nature that need be excluded from the public record.

*Corrections:*

o *Volume 1:* I previously submitted corrections to volume 1 of my deposition transcript. See my letter to Mr. Giuffra dated May 15, 1996, copies of which were sent to Mr. Cole and to the court reporter.

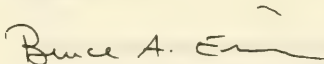
o *Volume 2:* Enclosed are four errata sheets correcting various typos and transcription errors in volume 2 of my deposition transcript. I also enclose the miniscribe version of both volumes sent to me under cover of Mr. Giuffra's letter.



Ms. Lori A. Conlon  
July 5, 1996  
Page 2

*Final versions of transcripts:* I would appreciate receiving final (corrected) versions of the transcripts of my deposition (volume 1, May 10, 1996, and volume 2, May 15, 1996). I also would appreciate receiving the final (corrected) version of the transcript of my appearance (along with Messrs. Patterson and Stephens) before the Committee on May 17, 1996. Thanks very much.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Bruce A. Ericson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bruce A. Ericson

Enc.

cc: Robert J. Giuffra, Jr., Esq. w/errata  
Lance Cole, Esq. w/errata  
Robert A. Gutkin, Esq. w/errata

DEPONENT: Bruce A. Ericson, Vol. 2

## ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
305	19	mean preliminary	mean the preliminary	Transcription error
308	22	recognize	recognized	Transcription error
309	21	planning budget	plan and budget	Transcription error
311	9	that marginally	that they would be marginally	Transcription error
311	13	understood it,	understood,	Transcription error
313	4	I interviewed	Mr. Patterson interviewed	Misspoke
313	22	bunch	Bunch	Transcription error
314	17	fifth,	Fifth,	Type
315	2	answer. A	answer: of	Transcription error
315	14	Best of	To the best of	Transcription error
315	19	was a	was of	Transcription error
319	10	ever permit	ever prohibit	Transcription error
322	6	necessities conversations	these conversations	Transcription error
322	13	preemptive sound	peremptory sound	Transcription error
323	22	ample	a sensible	Transcription error
325	5	Medor	Meador	Type
325	6	M-e-d-o-r,	M-e-a-d-o-r,	Type
325	18	level counsel,	counsel level,	Transcription error
326	19	Medor,	Meador,	Type
327	12	frequency, to	frequency. To	Type
328	3	saw them	saw him	Transcription error
329	8	attorney sort	bantering sorts	Transcription error
331	14	indicated for a long time,	indicated, for a long time	Transcription error

DEPONENT: Bruce A. Ericson, Vol. 2

## ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
331	16	don't	didn't	Transcription error
331	21	calculate	circulate	Transcription error
332	12	I'm sure	I'm not sure	Transcription error
333	2	but generalize	but I can generalize	Transcription error
333	5	construct	product	Transcription error
336	11	GOW	Gow	Type
338	4	limitations and	limitations on the	Transcription error
339	5	say I;	say "I";	Type
343	17	agreed	agree	Transcription error
343	20	from, as potential plaintiff, we focused on the most,	from, but as a potential plaintiff, we focused on Madison the most,	Transcription error
343	21	Madison, but	but	Transcription error
344	17	a large number.	"a large number."	Transcription error
345	19	enough and the quarterly	known and, accordingly,	Transcription error
347	16	acceptable.	unexceptionable.	Transcription error
347	18	Smith buys a monthly	Smith buys a lot and makes a monthly	Transcription error
347	22	13,194	\$134,194	Transcription error
348	6	and you	and by that you	Transcription error
348	7	page is	page. This is	Transcription error
349	15	didn't	did	Transcription error
351	7	fungible stated	fungible as stated	Transcription error
351	12	this qualification is	this--"qualification" is	Transcription error
351	13	know, but	know--but	Type

DEPONENT: Bruce A. Ericson, Vol. 2

## ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
353	14	spoke several	spoke to him several	Transcription error
355	14	specific deduction	specific reduction	Transcription error
355	18	totally close	totaling close	Transcription error
357	2-3	back. Read.	back, please.	Transcription error
358	19	drafts of	drafts or	Transcription error
359	15	an area	the only area	Transcription error
360	20	purposes, it	purposes, what	Transcription error
360	21	we were	was	Transcription error
361	7	I disappeared	he disappeared	Transcription error
361	9	barely	basically	Transcription error
363	4	Charles played	Charles James played	Transcription error
363	15	situation when	situation. When	Transcription error
366	19	normal. I think it said it was	normal or	Transcription error
367	7	businesses, I understand. The	businesses, as I understand it, the	Transcription error
367	11	monitored contributions	monetary contributions	Transcription error
370	15	actions,	objections,	Transcription error
370	16	we're on the lookout of	were on the lookout for	Transcription error
371	15	me all together.	me to fit together.	Transcription error
371	19	Put	It would put	Transcription error
371	20	and led	and might have led	Transcription error
374	8	Don't know.	I don't know.	Transcription error



DEPONENT: Bruce A. Ericson, Vol. 2

## ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
382	14	not focused because we looked at it	not our focus because	Transcription error
384	8	can't really cite from them and quote	cited to them and quoted	Transcription error
384	9	present them,	presented them,	Transcription error
385	20	Sure. We got	We got	Transcription error
387	4	we	you	Transcription error
388	19	issue. It's	issue. There is	Transcription error
389	12	There's one	There are one	Transcription error
389	13	report that, not sales,	report on sales,	Transcription error
392	9	extent.	extent:	Typo
394	9	cast that	cast the net	Transcription error
396	15	Limitation	That's a limitation	Transcription error
399	17	Paper shuffling	There is paper shuffling	Transcription error

**DEPOSITION OF JOHN M. LATHAM  
IN RE: S. RES. 120**

---

**WEDNESDAY, MAY 15, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of JOHN M. LATHAM, called for examination pursuant to notice of deposition, at 11:00 a.m. in Room 536 of the Dirksen Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, Esq.  
Majority Associate Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

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## WITNESS

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by Mr. Bartolomucci .....	49
by Mr. Ivey .....	52
by Mr. Bartolomucci .....	54

## 1 PROCEEDINGS

2 MR. BARTOLOMUCCI: Good morning,  
3 Mr. Latham. My name is Chris Bartolomucci. I'm an  
4 associate special counsel with the Special  
5 Committee. Because I understand we only have an hour  
6 to conduct this deposition, I'm going to dispense  
7 with some of the usual introductions if that's okay.

8 THE WITNESS: Feel free.

9 MR. BARTOLOMUCCI: You understand this is a  
10 deposition being conducted in connection with the  
11 Whitewater investigation?

12 THE WITNESS: Correct.

13 MR. BARTOLOMUCCI: And that you'll be  
14 placed under oath?

15 THE WITNESS: Yes.

16 MR. BARTOLOMUCCI: And you have no  
17 objection to being sworn in over the phone?

18 THE WITNESS: None at all.

19 MR. BARTOLOMUCCI: I'm going to ask the  
20 court reporter to go ahead and do that.  
21 Whereupon,

22 JOHN M. LATHAM

---

1 was called as a witness and, having first been duly  
2 sworn, was examined and testified as follows:

3 EXAMINATION

4 BY MR. BARTOLOMUCCI:

5 Q Mr. Latham, will you give us your full  
6 name, please.

7 A John Michael Latham.

8 Q And what's your present occupation?

9 A Consultant.

10 Q Are you with a firm?

11 A No, just me.

12 Q So you're a private consultant?

13 A Correct.

14 Q What matters do you consult on?

15 A It's pretty general. Management  
16 consulting.

17 Q And you have both a CPA and a law degree;  
18 is that right?

19 A Correct.

20 Q In June of '83 you went to work at Madison  
21 Guaranty as an executive vice president?

22 A Yes.



1 Q And as of October of '84, you became CEO  
2 and chairman of the board of Madison?

3 A I did at some point. I could not tell you  
4 the date.

5 Q Was it 1984?

6 A That sounds right, Chris, '84, '85. I  
7 can't tell the years apart anymore. It's too long  
8 ago. But if you've got records that indicate that's  
9 when it was, I have no reason to disagree with it.

10 Q You certainly were CEO and chairman of the  
11 board?

12 A Yes.

13 Q And when did you cease working at Madison  
14 Guaranty?

15 A Sometime in '86, probably somewhere around  
16 September.

17 Q What prompted your departure from Madison?

18 A It was by request of the Federal Home Loan  
19 Bank.

20 Q They asked that you step down?

21 A Yes.

22 Q And you did so?

1 A Yes.

2 Q And that was in 1986?

3 A Correct.

4 Q I want to turn your attention to the matter  
5 of the legal work that the Rose Law Firm did for  
6 Madison Guaranty.

7 A Uh-huh.

8 Q When you first came to Madison, what law  
9 firms, if any, were doing Madison's legal work?

10 A When I first came there?

11 Q That's right.

12 A Most of the regulatory work was done by  
13 John Selig of the Mitchell, Williams, Selig firm.  
14 Then there were other matters being handled by some  
15 other firms, but I think the vast bulk of it was by  
16 John Selig at that point. I don't think there was a  
17 whole lot at that point.

18 Q Was the Rose Law Firm doing any work for  
19 Madison in 1983 or when you first came to Madison?

20 A Not that I remember. When I first got  
21 there, Jim would have been handling anything they  
22 might have been working on, but I don't recall

1 anything.

2 Q Now, did there come a time when, in fact,  
3 the Rose Law Firm was doing legal work for the S&L?

4 A Yes.

5 Q And how did that come about?

6 A I don't know that anybody remembers that  
7 specifically.

8 Q Just tell me what you remember.

9 A I think what happened, Chris, was I know  
10 Rick Massey and I ran into each other when we were  
11 studying for the bar, and Rick went to work for the  
12 Rose Law Firm after that, and had talked with me  
13 about us using the Rose Law Firm. And I think I  
14 probably mentioned that to McDougal at some point.

15 At some later point, Jim came back to me  
16 and said let's use the Rose Law Firm, and he wanted  
17 to put them on retainer.

18 Q So you knew Rick Massey at the Rose Law  
19 Firm?

20 A Yes.

21 Q And you may have suggested to McDougal that  
22 you hire that firm to do some work?

1 A Right.

2 Q Then there was some intervening period of  
3 time and then McDougal decided actually to hire them?

4 A Yes. And in all fairness, I think he  
5 wanted to use them because he had friends over there,  
6 and one of those friends, of course, was Hillary. He  
7 had used the Rose Law Firm there before.

8 What's open there, of course, is what  
9 prompted Jim to make that decision. Was it a  
10 conversation with Hillary or was it just because I  
11 had suggested that at some point I would like to work  
12 with the Rose Firm at some point. I don't know.

13 Q How long was it between the time you  
14 suggested that Rose do some work and the time that  
15 McDougal actually saw that that would happen?

16 A I don't have a clue. I couldn't tell you.

17 Q Weeks, months?

18 A It could be either one.

19 Q Is it safe to say you personally did not  
20 hire the Rose Law Firm to work for Madison?

21 A Yes, in the sense -- let me elaborate on  
22 that for a moment -- in the sense that I didn't make

1 the decision to hire them and move that forward,  
2 that's correct.

3 Q Do you remember what year this was that  
4 these conversations with McDougal occurred?

5 A I would guess '85 because Rick and I got  
6 out of law school in '84, so it was most likely early  
7 '85 would be my guess. That's kind of a guess  
8 because I really don't remember.

9 Q In connection with the retention of the  
10 Rose Law Firm, do you remember there being any issue  
11 about an unpaid bill at Madison Bank and Trust?

12 A No.

13 Q I want to read you something that appears  
14 in a write-up of an interview, an interview conducted  
15 of you by the RTC in July of '95. Do you remember  
16 that interview?

17 A Yes.

18 Q It says "Latham said that at one time,"  
19 date not recalled, "James McDougal suggested that  
20 Madison Guaranty use Rose for some of the legal work  
21 at the institution. Latham said that McDougal had  
22 friends over there. He suggested we use them."

---

10

1 So that's accurate, isn't it?

2 A Yes.

3 Q It goes on "Latham said when asked who the  
4 friends were that it was Hillary Rodham Clinton and  
5 others." Is that also true?

6 A Yes.

7 Q In addition to Massey, did you also know a  
8 Rose attorney named David Knight?

9 A Yeah.

10 Q How did you know Mr. Knight?

11 A David was one of my professors in law  
12 school. It was a corporation -- I believe the  
13 corporations class that I took was taught by David  
14 Knight.

15 Q And also Rick Massey?

16 A No. Rick and I got out of law school at  
17 the same time. Rick wouldn't have been teaching law  
18 school while I was in it.

19 Q There wasn't an evening class that Rick  
20 Massey taught that you took?

21 A Not while I was in law school, because we  
22 both graduated at the same time, and we went to two

1 different law schools.

2 Q How about after law school, did you ever  
3 attend an evening course that was taught both by  
4 Massey and Knight?

5 A Not unless -- well, I may have, if it was a  
6 continuing ed course, or maybe they were teaching a  
7 course that I had an interest in and attended for a  
8 bit. It would have been after law school, but I  
9 don't remember it.

10 Q Now, did you socialize on a regular basis  
11 with Mr. Massey and Mr. Knight?

12 A No.

13 Q Do you remember having lunch with the two  
14 of them in the spring of 1985?

15 A No, I don't. That's not to say it didn't  
16 happen. I just don't remember.

17 Q I want to read you something from a  
18 deposition that Mr. Knight gave and see if it jogs  
19 your memory. He testified that, in fact, you did  
20 have lunch also with Mr. Massey. This is  
21 Mr. Knight's testimony and he was asked --

22 MR. IVEY: Could I get a page?

1 MR. BARTOLOMUCCI: Yes, page 13 of the  
2 April 26th deposition. It reads as follows.

3 "Question: Do you remember anything that  
4 Mr. Latham said with regard to this subject?

5 "Answer: Well, when we talked to him about  
6 doing some work, my recollection is that he said even  
7 though he was the president, that really it was James  
8 McDougal that made the decisions about hiring lawyers  
9 and that Madison had a regular outside counsel -- a  
10 regular firm that it used as outside counsel, which  
11 was the Mitchell law firm, and so that relationship  
12 was already there."

13 Does that refresh your recollection about  
14 the lunch and what you might have said?

15 A No, but if I was asked that question,  
16 that's what I would have said. And if David said we  
17 had lunch and discussed that, I'm sure we did.

18 Q So you have no reason to doubt his  
19 recollection?

20 A Oh, no. David's memory is most likely far  
21 better than mine.

22 Q It's true, in fact, when he said it was



1 McDougal who made the decisions about hiring lawyers?

2 A I can't remember what position I had at the  
3 time, but if I was CEO, it was certainly within my  
4 authority, but it was Jim's institution and he was  
5 using John Selig just before I got there, and John  
6 was doing a good job, and as Jim's institution, I  
7 felt we should be using lawyers -- I mean, usually  
8 you use lawyers that you're acquainted with, and I  
9 felt that we should be using the lawyers that Jim was  
10 acquainted with, that he wanted to.

11 So that was something I certainly would  
12 have deferred to him and not made any changes without  
13 being a change that he wanted to implement. So in  
14 that vein, yes, that's absolutely correct.

15 Q I also want to read you some testimony that  
16 Mr. Massey gave before our Committee on January 11,  
17 '96. And Glenn, it's page 25 of his testimony.

18 Mr. Massey testifies as follows: "I asked  
19 him to lunch one day" -- meaning you -- "and pitched  
20 the business, asked for their work. They were a  
21 growing S&L. We liked working for companies like  
22 that, so I pitched the work. The response that I got

---

1 was gee, I'd like to think about hiring you, but it's  
2 not up to me.

3 "Question: In other words, Mr. Latham told  
4 you it wasn't in his power to give work out from the  
5 bank?

6 "Mr. Massey: That's correct."

7 Is that also consistent with your  
8 recollection?

9 A Yes, as long as you're defining power as  
10 we've just discussed, yes. It's the same thing that  
11 we talked about with regards to the conversation with  
12 David Knight.

13 Q It seems to me the testimony of both Knight  
14 and Massey, what they remember being told by you was  
15 that you lacked authority on your own to retain the  
16 Rose Law Firm; and that's correct, isn't it?

17 A Well, I just answered that. Are you a  
18 lawyer?

19 Q Sure.

20 A Then you're well versed in corporate law  
21 and as the CEO, the CEO does have the authority to  
22 hire the institution's law firm. So legally, I had

1 that authority, but as I just explained, it was one  
2 that I didn't feel that I should exercise without it  
3 being something that Jim wanted to do, because it was  
4 his institution, and I felt whatever law firms we  
5 were using should be the ones that Jim had contact  
6 with and wanted to use.

7 Q So whether in the abstract you had the  
8 legal authority to retain the law firm, you might  
9 well have said to Knight and Massey that you can't do  
10 that without McDougal signing off on it?

11 A Right. It would be -- as far as I was  
12 concerned, that should be a decision for them.

13 Q Do you know a woman formerly named Pat  
14 Heritage?

15 A Yes.

16 Q Did there come a time when Ms. Heritage  
17 asked you about the Rose Law Firm being on a \$2000 a  
18 month retainer?

19 A I don't remember that.

20 Q Well, let me read you part of her  
21 testimony. This is from her deposition of February  
22 23, 1996.

1 MR. IVEY: What page?

2 MR. BARTOLOMUCCI: Page 45.

3 BY MR. BARTOLOMUCCI:

4 Q She says as follows: "I got a little  
5 concerned about why we were paying \$2000 a month  
6 because I knew I was the one referring out the legal  
7 work and I wasn't referring it there" -- meaning the  
8 Rose Law Firm. "And I went to John Latham and asked  
9 him why are we doing this, and he said that's Jim's  
10 deal, just do it."

11 Does that refresh your recollection at all?

12 A No, but Pat wasn't referring out all of the  
13 legal work. The legal work Pat might have been  
14 referring out might have been more in the area of  
15 collections, but she certainly wasn't referring out  
16 all of the regulatory legal work we were doing by any  
17 means.

18 Q What I'm interested in is whether you  
19 remember telling her with respect to the retainer  
20 that that's Jim's deal?

21 A No, I don't remember that at all.

22 Q Is it possible you would have said

1 something like that?

2 A Well, the retainer was Jim's idea. That's  
3 where I heard it from anyway. So it was -- Jim is  
4 the one that between Jim and I had wanted to set up a  
5 retainer with the Rose Law Firm, so I may have said  
6 that the retainer situation was set up by Jim, yeah.

7 Q So it was your testimony that the idea of a  
8 \$2000 a month retainer specifically was Jim  
9 McDougal's idea?

10 A Correct.

11 Q Did you ever see Bill Clinton at Madison  
12 Guaranty or with Mr. McDougal?

13 A Yes.

14 Q Did the governor ever jog over to Madison  
15 Guaranty?

16 A I only remember one time when I saw him  
17 jogging, and it was either on a weekend or after  
18 hours at some time, because I was working there, and  
19 there wasn't anybody else at the institution, and  
20 Bill was jogging and came in to see if Jim was there.

21 Q Did he, in fact, see Mr. McDougal that day?

22 A No, I don't think Jim was there that day.

1 Q Did Mr. McDougal ever relate any stories to  
2 you about Bill Clinton having jogged over to the  
3 building?

4 A No.

5 Q So Mr. McDougal never said to you anything  
6 about Bill Clinton being sweaty and sitting down in a  
7 leather chair?

8 A No, Chris. The first memory I have of that  
9 was when some reporter asked me about it during the  
10 election.

11 Q So you're familiar with the incident I'm  
12 referring to?

13 A Yeah, it's been in the papers a few times.

14 Q But if it happened, you weren't there?

15 A No.

16 Q And Mr. McDougal never talked to you about  
17 it?

18 A No. I have no recollection of it from that  
19 point in time.

20 Q Did you ever see Hillary Rodham Clinton go  
21 over to Madison Guaranty?

22 MR. IVEY: Before we move on -- I thought

1 our agreement was off the record we would alternate  
2 questioning.

3 MR. BARTOLOMUCCI: This was the last  
4 question I was planning to ask him before turning it  
5 over to you.

6 MR. IVEY: Okay.

7 BY MR. BARTOLOMUCCI:

8 Q Did you ever see Hillary Rodham Clinton  
9 over at Madison Guaranty?

10 A Chris, not that I remember.

11 MR. BARTOLOMUCCI: I'm going to let Glenn  
12 proceed for the next 15 minutes.

13 EXAMINATION

14 BY MR. IVEY:

15 Q I don't know that I'll need 15 minutes, but  
16 I do have a few follow-up questions with respect to  
17 the retention of the Rose Law Firm. Are you able to  
18 hear me all right?

19 A Yes.

20 Q You mentioned earlier that Mr. McDougal had  
21 said that the Rose Law Firm had done some legal work  
22 for him before?

---

20

1 A Correct.

2 Q Were you familiar with the work that the  
3 Rose Law Firm had done for him?

4 A This is Glenn?

5 Q Yes.

6 A Not in detail, Glenn. I remember that  
7 there was a tape for the bank that Jim owned, Madison  
8 Bank and Trust, that he lost, and it's my  
9 understanding that the Rose Firm handled the  
10 litigation on that matter.

11 Q Did he ever comment about the quality of  
12 the work that the Rose Law Firm had done?

13 A I don't remember any comments about the  
14 quality. Jim made some jokes about it. Jim liked to  
15 make jokes about lawyers.

16 Q A lot of people do.

17 A I've noticed.

18 Q Did you have any reason to object to the  
19 hiring of the Rose Law Firm?

20 A Pardon?

21 Q Did you have any reason to object to the  
22 hiring of the Rose Law Firm?



1 A No.

2 Q My understanding was that you worked fairly  
3 closely with Mr. Massey after the firm was retained  
4 with respect to securities issues?

5 A Yes.

6 Q And I take it that Mr. Massey was fairly  
7 knowledgeable on this issue?

8 A Oh, gosh, Rick -- I think at that point in  
9 time, Rick had the federal securities laws memorized.

10 Q Was it your view, then, that he provided  
11 quality legal service for Madison Guaranty?

12 A Yes.

13 Q Are you aware of any objections that  
14 Mr. McDougal had with respect to the work Rose Law  
15 Firm provided for Madison Guaranty?

16 A No.

17 Q Now, also, you mentioned you didn't hire  
18 the Rose Law Firm, but I take it from reviewing the  
19 correspondence between Madison Guaranty and the Rose  
20 Law Firm, you seemed to work fairly closely with the  
21 firm with respect to the securities issue at least?

22 A Correct.

1 Q Did you also notify the firm that they had  
2 been hired and deal with the arrangements of the  
3 representation and fees and that sort of thing?

4 A Most likely, but you know, I don't know. I  
5 don't have a memory of it, but that would be  
6 consistent. Most likely, that is the case.

7 Q I had one other question with respect to  
8 the prior representation by the Rose Law Firm for  
9 Mr. McDougal at the time he was at Madison Bank and  
10 Trust. Were you familiar with any billing issues  
11 connected with Madison Bank and Trust?

12 A None that I remember, Glenn.

13 Q Okay. And that's logical since you were at  
14 Madison Guaranty as opposed to Madison Bank and  
15 Trust; is that correct?

16 A Well, at some point I bought an interest in  
17 Madison Bank and Trust. It was after -- you know, at  
18 that point in time, I don't remember Rose doing any  
19 legal work for the bank. I think all the work had  
20 been prior to that.

21 Q And I take it that even after you bought an  
22 interest, did you handle billing issues for the bank?

1 A Billing issues, you mean like for the law  
2 firm?

3 Q Yes, sir.

4 A I don't think we really had very much at  
5 that point, other than maybe some local attorneys up  
6 in that area of the state that were handling  
7 collections.

8 Q And at the point at which you bought an  
9 interest in Madison Bank and Trust, was this after  
10 1985?

11 A It wouldn't have been after '85. My guess  
12 would be sometime in '85.

13 Q With respect to Ms. Heritage's comment  
14 about this being Jim's deal, you testified, I think,  
15 a moment ago that the retainer idea was one that came  
16 from Mr. McDougal?

17 A Correct.

18 Q Do you know if he had had any discussions  
19 with the Rose Law Firm about the retainer issue?

20 A I'm sorry. I missed the first part of  
21 that.

22 Q Do you know if he had had any conversations

---

1 with the Rose Law Firm about the retainer issue prior  
2 to talking to you?

3 A Sitting here today, I have the impression  
4 that when Jim -- that at that point in time when Jim  
5 was talking about a retainer, that it had already  
6 been discussed or agreed to.

7 Q I take it you didn't have much involvement  
8 in that issue?

9 A No, not that I remember.

10 Q Did you get the sense at all there was  
11 anything improper with respect to the retainer issue,  
12 the retainer arrangement?

13 A No, not at all.

14 MR. IVEY: Let me turn it back over to  
15 Mr. Bartolomucci.

16 EXAMINATION

17 BY MR. BARTOLOMUCCI:

18 Q Mr. Latham, one of the matters that the  
19 Rose Law Firm worked on was related to Madison's plan  
20 to issue a series of preferred stock. Do you recall  
21 that?

22 A Chris, I don't. Let me -- I know this

1 seems to be a real important issue for y'all. Let me  
2 try and summarize what I know and what I think I  
3 remember, and maybe that will help in some of the  
4 questions.

5 What I do remember is we were pursuing  
6 avenues of capital, Chris, and what I remember is  
7 that we were considering subordinated debt. We, of  
8 course, considered all of the options, but I remember  
9 pursuing subordinated debt and working with John  
10 Selig on that issue and having meetings with the  
11 Federal Home Loan Bank on that issue.

12 I do not remember working with the Rose  
13 Firm on preferred stock. I'm sure that we did.  
14 That's what their billing records indicate. It's  
15 just that I don't remember -- obviously we worked on  
16 both. And what the time frames were on either one  
17 and which one we wound up choosing to pursue, I can't  
18 remember.

19 Q Do you have any memory of conferences with  
20 Mrs. Clinton?

21 A Chris, I can't remember being in any  
22 meetings with Hillary. I know that we were because I

1 know if I saw Hillary downtown somewhere, we knew  
2 each other by sight. But I know I had met Hillary  
3 and we had been in some conferences, but I don't  
4 remember. I don't have a specific recollection of  
5 any.

6 Q We have a letter dated May 23, 1985 from  
7 Mrs. Clinton to Jim McDougal, which transmitted a  
8 letter written by Beverly Bassett Schaffer, the  
9 savings and loan supervisor. And in Mrs. Clinton's  
10 letter, she writes that "enclosed is a letter for  
11 your files from Beverly Bassett approving the  
12 proposed authorization and issuance of a class of  
13 nonvoting preferred stock." And your name is cc'd on  
14 the letter.

15 Do you remember receiving that?

16 A No, I don't. It was addressed to who?

17 Q To McDougal.

18 A Okay. And what's the date?

19 Q May 23, '85.

20 A I'm wondering if we pursued the preferred  
21 stock before we pursued the subordinated debt. But  
22 no, I don't remember the letter specifically.

1 Q Since your memory on this seems fairly  
2 limited, let me ask a broad question. What do you  
3 remember about the involvement of either the Rose Law  
4 Firm or Hillary Clinton in connection with this  
5 preferred stock matter?

6 A Chris, in all honesty, I don't think I have  
7 any -- I don't really recall it at all. If you had  
8 asked me before I read the articles in the newspapers  
9 what we were doing as far as pursuing outside  
10 capital, I would have said we were pursuing  
11 subordinated debt, and we were working with John  
12 Selig. I have a complete blank on working with the  
13 Rose Firm on that matter.

14 Q Now, Mrs. Clinton's billing records  
15 indicate that in late April of 1985, she had a  
16 telephone conference with Beverly Bassett. Can you  
17 recall any conversations you had with anyone about  
18 Mrs. Clinton's communication with Beverly Bassett  
19 either before it happened or afterwards?

20 A No.

21 Q Now, did there come a time when the Rose  
22 Law Firm ended its retainer relationship with Madison

1 Guaranty?

2 A Yes.

3 Q What do you recall about that?

4 A I remember receiving a letter from Hillary  
5 to the effect that they had not done any work for us  
6 in a while. There was a balance in the retainer  
7 account and that if they weren't providing services,  
8 they didn't want to keep receiving it and holding  
9 moneys from us. They returned whatever balance was  
10 there.

11 Q Now, I have a copy of this letter, and I'm  
12 going to represent to you that it's dated July 14,  
13 1986.

14 A Okay. Did I remember it fairly  
15 accurately?

16 Q You did a pretty good job. Does the date  
17 July 14, 1986 or more generally July of '86 have any  
18 significance to you?

19 MR. IVEY: With respect to what?

20 MR. BARTOLOMUCCI: With respect to Madison  
21 Guaranty.

22 THE WITNESS: Yeah. I mean, we were live



1 when we met with the Federal Home Loan Bank, and they  
2 requested that Jim and I resign, and they in essence  
3 took the institution over.

4 BY MR. BARTOLOMUCCI:

5 Q And that had happened just a few days prior  
6 to July 14th; isn't that right?

7 A I want to say it was July 10th, but without  
8 looking at the calendar -- even to look at the  
9 calendar, I wouldn't know. It was sometime around  
10 the 10th.

11 Q It's my understanding that it was July  
12 11th, so your memory is pretty good.

13 We're going to pause for just a second,  
14 Mr. Latham.

15 (Pause.)

16 BY MR. BARTOLOMUCCI:

17 Q Okay, Mr. Latham. We've established that  
18 the FHLBB meeting was on July 11th in '86 and that  
19 was in Dallas; right?

20 A Correct.

21 Q It was a large meeting?

22 A Pardon?

1 Q It was a large number of people were at the  
2 meeting?

3 A Yes, we had the whole board and Federal  
4 Home Loan Bank had a number of folks there, so yeah,  
5 it was a pretty large meeting.

6 Q Was Beverly Bassett there?

7 A I believe she was.

8 Q And the fallout of this meeting was that  
9 the federal regulators asked that you and  
10 Mr. McDougal step down?

11 A They insisted on a cease and desist of the  
12 institution and literally took it over.

13 Q To your knowledge, did anyone inform  
14 Hillary Clinton or the Rose Law Firm about what  
15 happened at the meeting?

16 A Not to my knowledge. Not that I remember.

17 Q Did anyone say that to you? Do you have  
18 any knowledge of it whatsoever?

19 A Well, I mean, it's certainly possible.  
20 It's kind of like going through a car wreck. To  
21 remember every little detail that happened, no, not  
22 that long ago. I just don't have any recollection of

1 it.

2 Q The July 14th letter that Mrs. Clinton  
3 wrote indicates that it was hand-delivered. Do you  
4 know what the urgency might have been to end the  
5 retainer agreement on that specific day?

6 A No. I just remember getting the letter,  
7 and I remember it being somewhat of a surprise, but I  
8 don't think I had had any conversation with anybody  
9 about it. It just came in the door out of the blue.

10 Q Did you wonder whether Mrs. Clinton's  
11 action was related to the meeting in Dallas?

12 A No. I think we had enough problems to deal  
13 with, that I doubt that would have been of any  
14 concern.

15 Q Of any concern to you?

16 A Correct.

17 Q But what happened at the meeting might well  
18 have been of concern to the Rose Law Firm?

19 A Perhaps.

20 MR. BARTOLOMUCCI: I'm going to give Glenn  
21 a chance to follow up on these issues.

22 THE WITNESS: Chris, when I asked if you

1 were a lawyer, I wasn't trying to be rude. On that  
2 point -- if you're a lawyer, then I knew you would  
3 understand the point. If you weren't, I was going to  
4 try to explain it further. I apologize if you  
5 thought I was rude.

6 MR. BARTOLOMUCCI: No offense taken.

7 THE WITNESS: I don't make jokes about  
8 lawyers.

9 EXAMINATION

10 BY MR. IVEY:

11 Q Just briefly, there were a couple predicate  
12 facts placed in the questions you answered. I want  
13 to be clear about them. With respect to the  
14 hand-delivery, I think the question was phrased do  
15 you know why there was such an urgency for the letter  
16 getting there. Do you know that there was an urgency  
17 for the letter to get to you?

18 A No, I don't.

19 Q You also mentioned that you had quite a few  
20 things on your mind, I think, at the time. I take it  
21 the letter, though you were surprised, it didn't  
22 strike you as a particularly big event?

1 A No.

2 Q Also, were you privy to any of the  
3 conversations among the Rose Law Firm attorneys as to  
4 why they ended the relationship, the representation  
5 of Madison Guaranty at that time?

6 A No, not to my knowledge.

7 Q Did any of the attorneys discuss it with  
8 you at that point other than the letter that was sent  
9 to you?

10 A I'm sorry, I was coughing and I missed part  
11 of it.

12 Q I'm sorry, let me repeat it.  
13 Did any of the Rose Law Firm lawyers  
14 discuss the end of the representation with you beyond  
15 the letter that was sent?

16 A I don't recall any.

17 MR. IVEY: That's all for me at this  
18 point.

19 EXAMINATION

20 BY MR. BARTOLOMUCCI:

21 Q I'm going to turn to a new subject,  
22 Mr. Latham. Do you recall in September or October of

1 '85 that Madison Financial Corporation and Seth Ward  
2 purchased a large tract of land from the Industrial  
3 Development Corporation?

4 A Yes.

5 Q And subsequent to the purchase, what was  
6 that property referred to in Madison Guaranty  
7 circles?

8 A Chris, it sort of depends on what part of  
9 it you're talking about and whom you're talking  
10 with. We kind of referred to the whole thing as the  
11 IDC property. There was -- the part that McDougal  
12 was really wanting, if I remember correctly, was just  
13 one area on 145th Street that he wanted to develop as  
14 a residential area. And before we ever closed on it,  
15 he wanted to sell off everything else and recover his  
16 purchase price.

17 The area that he was going to develop we  
18 referred to as Castle Grande, and there were times  
19 that it was referred to as 145th Street, and I think  
20 that was kind of just -- I think that was synonymous  
21 with the IDC property out at 145th Street, but there  
22 were parts of it that were not out there.

1 Q So at least a large chunk of the property  
2 was referred to as Castle Grande?

3 A I would say -- gosh, you'd almost have to  
4 look at a map, but I'd say it was really a small part  
5 of it.

6 Q Now, the way the deal --

7 A Less than half of it would be the Castle  
8 Grande development itself, I think.

9 Q Now, the way the deal was structured,  
10 Madison Financial purchased part of the property and  
11 Seth Ward purchased part of the property with Madison  
12 Guaranty financing. Do you know why the purchase was  
13 divided like that?

14 A Two reasons, I think, Chris. One, that  
15 we -- I think that we had a limitation on how much we  
16 had invested in the service corporation, and we were  
17 probably the -- the whole property itself would have  
18 put us over the property -- I mean, over that  
19 limitation, as well as everybody viewed that as a  
20 seal. It was a very good purchase, and I think that  
21 both Seth wanted to make as much money on it as  
22 possible, and Jim McDougal wanted to make as much

---

1 money as possible. And so they split it up.

2 And I think at some point -- I don't  
3 remember the details, but Madison probably -- the  
4 service corporation probably had an option on Seth's  
5 part so if they sold it -- so they were, in essence,  
6 free to sell pieces of it. If they did, they could  
7 immediately exercise the option and turn a profit,  
8 and I guess Seth could turn around and sell it  
9 himself. So it would be for those two reasons.

10 Q The first reason, though, was that there  
11 was an applicable regulation which would have  
12 prevented Madison Financial from purchasing the  
13 entire tract?

14 A Correct.

15 Q And that's sometimes called the direct  
16 investment rule?

17 A I think that's correct, Chris.

18 Q Do you remember that aspect of the  
19 transaction coming under criticism from the Federal  
20 Home Loan Bank?

21 A I don't remember it specifically, Chris. I  
22 don't remember the specifics of their report. But



1 they criticized everything, so I'm sure they  
2 criticized that.

3 Q Let me try to refresh your memory. There's  
4 a May 8, 1986 document of the FHLBB of Minneapolis  
5 and in that report, it says "Ward apparently  
6 warehoused this land to reduce Madison's financial  
7 investment and the attendant borrowing from Madison  
8 Guaranty. In this way, limitations on Madison  
9 Guaranty's investment in its service corporation are  
10 avoided. By using this circuitous route, additional  
11 Madison Guaranty investment in Madison Financial was  
12 disguised as a loan to Ward."

13 Do you remember regulators criticizing the  
14 transaction along those lines?

15 A No.

16 Q Do you agree with this quote when it says  
17 "Ward apparently warehoused this land," and in fact,  
18 this was a disguised transaction?

19 A No. Like I said, this is going back quite  
20 a few years, but I felt that -- everybody at the time  
21 felt that was an extremely good bargain, and I think  
22 everybody wanted a piece of it, and the two reasons I

1 gave you was the reason it was structured that way,  
2 as far as I know.

3 Q As far as you know, there weren't concerns  
4 about the legality of the structure?

5 A No, I don't remember any concerns about the  
6 legality, no.

7 Q Now, did you have an understanding as to  
8 how Ward was to be compensated for his role in the  
9 transaction?

10 A At some point, I remember Seth showing me a  
11 memo that he was going to -- that he was to be paid a  
12 commission on sales of some of the property. I think  
13 that we got a commission or bonus or compensation for  
14 structuring the transaction, and that's all I  
15 remember about it.

16 MR. IVEY: What time is your flight,  
17 Mr. Latham?

18 THE WITNESS: I need to leave here about  
19 12:00, because I've got to make a stop on the way  
20 out.

21 MR. IVEY: So you've got about 15 minutes  
22 left?

1 MR. BARTOLOMUCCI: 20.

2 THE WITNESS: I can go about 20 maybe. Are  
3 you all close to the end or you got a lot more?

4 MR. BARTOLOMUCCI: Well, we're going to use  
5 up the time.

6 MR. IVEY: I hope you're packed already.

7 BY MR. BARTOLOMUCCI:

8 Q Now, the Committee is in possession of a  
9 letter dated September 24, 1985, a letter from Ward  
10 to McDougal which sort of sets out the terms of this  
11 deal. Do you remember Mr. Ward showing that letter  
12 to you?

13 A Can you read part of it? Is this Chris?

14 Q Yes.

15 A Can you read part of it, Chris?

16 Q It's kind of lengthy, but it essentially  
17 says that -- it sort of divides title to the property  
18 along 145th Street and provides that Madison will  
19 have an option to buy back the land except for one  
20 specific parcel.

21 A And this is a letter from Seth to Jim?

22 Q That's right.

1 A Without seeing it -- I'm sure I've seen it  
2 before, so let's proceed along those lines.

3 Q Let me ask you something else. In this  
4 letter, Ward is given a piece of property apparently  
5 referred to as Holman Acres, 22-1/2 acres of land.  
6 Do you have any memory of how that particular  
7 property fit into the transaction?

8 A He was given an option on Holman Acres --  
9 no, I don't.

10 Q There's also a -- there's an option  
11 agreement dated May 1, 1986, which gives Madison the  
12 option to buy back Holman Acres for \$400,000, and  
13 this is a document which actually appears to have  
14 your signature on it as the optionee. Do you have  
15 any memory of executing an option like that?

16 A No, I don't. That's an option for the  
17 service corporation to buy the property from Seth?

18 Q That's right, for \$400,000.

19 A Is this the same property that Seth had an  
20 option to buy from the service corp.?

21 Q No. It's my understanding that the 9/24/85  
22 letter gave him that property free and clear, so he

1 already had it.

2 A Okay. Okay, I'm with you now. Okay.

3 Q So what do you recall about this option  
4 under which Madison would be able to purchase the  
5 property for \$400,000?

6 A I don't have a recollection. I don't  
7 remember.

8 Q Do you remember testifying in the Ward  
9 versus Madison trial in 1988?

10 A Yeah, I do.

11 Q I want to read some of your testimony from  
12 that and see if it jogs your memory.

13 A Okay.

14 Q The question to you was --

15 MR. IVEY: What page?

16 MR. BARTOLOMUCCI: It's page SEN 32912.

17 You're asked about the option and here's what you say  
18 about it. "The loan was done really at that time in  
19 lieu of the option. The option more concretely or  
20 more accurately reflects the nature of the  
21 transaction, that being that the service corporation  
22 owed Seth 300,000 in commissions. In the initial

1 purchase of all that property, Seth retained tracts  
2 27 and 28 of Holman Acres as his commission, which  
3 was later to be bought by the service corporation.  
4 The option allows the service corporation to buy the  
5 property from Seth and thus Seth receives the  
6 \$300,000 and the service corporation would have the  
7 property."

8 Do you remember giving that testimony?

9 A No, but whatever I said then was what I  
10 remembered at the time. That would be far more  
11 accurate than my memory at this time.

12 Q I've waded through the documents and your  
13 testimony, and let me tell you what my understanding  
14 of this was, and see if you can comment on it or  
15 affirm it.

16 MR. IVEY: He's going to testify for you  
17 here, Mr. Latham.

18 MR. BARTOLOMUCCI: I'm trying to speed  
19 things up a little bit.

20 BY MR. BARTOLOMUCCI:

21 Q I think that the substance of your  
22 testimony was that Seth Ward was given Holman Acres,

1 and that this option was executed -- was prepared  
2 with the idea that land would be bought back from  
3 Seth and that that would serve as his compensation  
4 for the Castle Grande transaction.

5 Do you have any memory consistent with  
6 that?

7 A No, I don't, Chris -- I don't have any  
8 memory inconsistent with it. I just don't have any  
9 memory of it. I'm not sure I'm following, though.  
10 It would help if I could read the whole thing. Let  
11 me paraphrase it and see if I understand what you're  
12 saying. I'm just trying to understand what I said  
13 back five years ago or whatever.

14 Seth had property at 145th Street or IDC  
15 that is part of the deal that was given to him or he  
16 retained title -- or he retained ownership of it.  
17 And we structured an option -- we bought -- we had an  
18 option to buy that property from him.

19 Q Correct, for \$400,000. And I guess my  
20 question is do you remember that option as being part  
21 of his compensation, the notion that the property  
22 would be bought back from him for several hundred

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1 thousand dollars? Was that how he was to be  
2 compensated for his role in the deal?

3 A I don't know. It almost sounds like the  
4 property was the compensation, and we're exchanging  
5 an option or later to be cash for the property  
6 maybe. Does that make -- I'm confused on it.

7 MR. IVEY: Can I get my turn?

8 MR. BARTOLOMUCCI: Let me just ask one more  
9 question.

10 MR. IVEY: All right.

11 BY MR. BARTOLOMUCCI:

12 Q Do you remember any involvement by the Rose  
13 Law Firm or Hillary Clinton or Webster Hubbell in the  
14 Castle Grande deal?

15 A No.

16 MR. BARTOLOMUCCI: Okay, Glenn. Have at  
17 it.

18 THE WITNESS: We would have -- I'm pretty  
19 sure we had a law firm working on the transaction,  
20 but I don't remember who that was.

21 EXAMINATION

22 BY MR. IVEY:



1 Q Let me take a moment with you. This is  
2 Glenn Ivey again. You gave a statement to the  
3 Resolution Trust Corporation Office of Inspector  
4 General on July 16, 1995, and I just wanted to read  
5 it to you. I don't know that you have the benefit of  
6 being able to review it. But it is relevant to that  
7 point.

8 I'm quoting now. "Latham said he was not  
9 aware of any law firm that provided services to Ward,  
10 Madison Financial or Madison Guaranty in the purchase  
11 of the IDC property. Madison said he was not aware  
12 of any law firm that provided legal services to the  
13 banks or IDC in the matter."

14 I don't know if that helps your  
15 recollection or not, but that's the statement you  
16 gave to the RTC about a year ago.

17 Also, with respect to the issue of the  
18 reasons for the way the deal was structured, do you  
19 recall being asked questions about that?

20 A Back in '95?

21 Q No, just a moment ago.

22 A Oh, yeah.

1 Q Let me read what you said in '95 to the  
2 RTC. "Latham said that he recalled that there were  
3 three reasons why the purchase was split between Ward  
4 and Madison Financial. He said that there was in  
5 effect an Arkansas regulation that limited the amount  
6 of the state chartered institution's net worth that  
7 could be invested in a service corporation, and that  
8 he recalled that the limitation at the time may have  
9 been 6 percent. Latham said that a second  
10 consideration was that Ward wanted to make money on  
11 the transaction himself and still wanted to purchase  
12 part of the property. A third reason, according to  
13 Latham, was that McDougal really only wanted to  
14 purchase a portion of the IDC property that he wanted  
15 to use to develop a housing development, but that the  
16 IDC property had been presented as an all or nothing  
17 package purchase."

18 That's roughly consistent with what you've  
19 said this morning, isn't it?

20 A Yeah, I think so. That's pretty consistent  
21 with my recollection.

22 Q Now, with respect to the questions you were

1 disclosed outside of the RTC?

2 A Can you repeat that.

3 Q Do you have any understanding as to when  
4 the fact that Pillsbury had been retained to  
5 represent the RTC in this matter was disclosed  
6 outside of the agency, either to another government  
7 agency such as the Treasury Department or the White  
8 House?

9 A I don't know anything other than what I  
10 have read and heard from news accounts.

11 Q And your firm would not have announced that  
12 you had been retained by the RTC to handle this  
13 matter?

14 A That's correct. In fact, there was a  
15 general sense that we should not make any public  
16 comment about that. And we were retained by a  
17 client. This is a client of the firm's and whatever  
18 the client may want to do is up to the client, but  
19 the client doesn't want us to necessarily make any  
20 public announcement, and I don't believe the firm did  
21 make any public announcement.

22 Q Did you have any discussion with anyone at

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1 the RTC about the need to maintain the  
2 confidentiality of the fact that PMS had been  
3 retained to represent the RTC in connection with the  
4 Madison matter?

5 A I may have had some conversations. I  
6 probably had conversations -- I know I had a  
7 conversation with Mr. Ericson about that because  
8 there was a general instruction that if you get any  
9 inquiries, just refer them to -- I think it was Steve  
10 Katsanos at RTC, and we would not necessarily confirm  
11 or deny our retention, but any matter should be  
12 referred to him and the RTC can make whatever  
13 announcement they wanted to make, if any.

14 Q Did you ever speak to Jean Lewis in  
15 connection with the work you did for the RTC?

16 A Yes.

17 Q Do you recall how often you would have  
18 spoken to her?

19 A Once.

20 Q What do you recall about that conversation?

21 A I recall it was relatively early in our  
22 engagement. She was in Kansas City. I believe it

1 may have been in connection with the 6(e) petition  
2 that I was putting together, was trying to put  
3 together, some supporting documentation to support  
4 the facts that were laid out in that petition.

5 I believe I called her to discuss some  
6 aspect of a reference in that petition or in an  
7 attachment I was going to make to the petition,  
8 whether or not she would do a one-page affidavit or  
9 something of that nature. And at that point, she  
10 seemed cooperative. I didn't have any subsequent  
11 contact with her. Others in her firm, I think,  
12 picked up that contact to the extent there was any.

13 Q Do you have any understanding as to whether  
14 Ms. Lewis was helpful to other members of your firm  
15 in connection with their work on this matter?

16 A I don't.

17 Q Did you have any conversation with anyone  
18 at the RTC about Ms. Lewis?

19 A I must have. I believe the answer is yes.

20 Q Do you recall anything about those  
21 conversations?

22 A I can't recall specific conversations, but

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1 over the course of a couple of months, there must  
2 have been references to Jean Lewis, the criminal  
3 referrals. I believe -- what was April's last name?

4 Q Breslaw.

5 A Breslaw, called me and advised me she was  
6 either taking herself off the case -- there was some  
7 public information that surfaced about a contact she  
8 had had with Jean Lewis and she just called and  
9 advised she would no longer be working on the case.

10 There were occasional references at times  
11 to Jean Lewis and work she had done and how to get  
12 access to that work in Kansas City, or whether or not  
13 she was cooperative or not cooperative.

14 Q Were there any references to the quality of  
15 her work?

16 A There may have been, but I don't recall  
17 them specifically.

18 Q Did you ever review her criminal referrals?

19 A Yes, in a general way.

20 Q Did you draw any conclusion as to the  
21 quality of those criminal referrals?

22 A I saw the criminal referrals as providing a

1 good starting point, a good road map for a possible  
2 investigation of some of these transactions. I don't  
3 remember. There were several criminal referrals,  
4 eight or nine of them. Some were, I think, very  
5 narrowly targeted. Some of them were more broadly  
6 targeted.

7 I'm not sure if I went through all of the  
8 supporting documentation for each of the referrals,  
9 but my sense was she was raising some legitimate  
10 issues that needed to be looked at.

11 Q As U.S. Attorney, did you have experience  
12 reviewing any RTC criminal referrals, or as an  
13 Assistant U.S. Attorney?

14 A I'm trying to think. I don't think so. I  
15 don't believe we had any RTC -- we had some bank  
16 fraud issues and cases and investigations, but I  
17 don't believe we had any RTC referrals.

18 Q You had some involvement with at least bank  
19 fraud investigations as U.S. Attorney?

20 A Yes.

21 Q And complex ones?

22 A Yes.

1 MR. GIUFFRA: Anything more?

2 MR. COLE: I do have a question about the  
3 review of the referrals that Ms. Lewis had prepared.

4 BY MR. COLE:

5 Q Mr. Stephens, can you recall whether your  
6 firm had found or concluded that there had been any  
7 kind of check kiting conspiracy of Madison Guaranty  
8 Savings & Loan at the time Ms. Lewis alleged in her  
9 referrals?

10 A I'm not sure what the conclusions  
11 ultimately were of our firm. I believe there was  
12 some indication at least in one of the preliminary  
13 analyses that there was substantial money flows  
14 moving among several different banks, and that at  
15 times, they seemed to be covering deficits in those  
16 accounts. And whether you would characterize that as  
17 a check kite or not -- I think there was some general  
18 sense that there was a lot of movement of money to  
19 cover potential overdrafts in a variety of different  
20 real estate accounts.

21 Q Do you know whether any of the reports that  
22 your firm issued came to any conclusions as to



1 whether claims based upon a check kiting period might  
2 be asserted by the RTC?

3 A I don't know the answer to that.

4 Q Did you review the -- you indicated that  
5 there were several criminal referrals and that's  
6 correct. I'd like to draw your attention, if you  
7 recall this, to the first criminal referral that  
8 Ms. Lewis prepared, which was in 1992, and alleged a  
9 check kite at Madison Guaranty Savings & Loan. Did  
10 you draw any conclusions about the allegations that  
11 were made in that referral?

12 A I think, if I remember correctly, the check  
13 kite allegation was sort of -- was a broad-based  
14 allegation about moving the money among different  
15 accounts, and I believe it is that general allegation  
16 that was sort of part of the genesis of Mr. Ericson's  
17 examination of sort of the Whitewater accounts.

18 Q Did you review that particular referral?

19 A I believe I did. I think I went through  
20 all of them in some fashion.

21 Q If I could have just a moment, I'd like to  
22 draw your attention to something in one of your

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1 reports, a preliminary report on Whitewater.

2 If I could ask you to look at pages 8 and 9  
3 of the April 24, 1995 preliminary report to the  
4 Resolution Trust Corporation on Madison Guaranty  
5 Savings & Loan and Whitewater Development Company,  
6 Inc. prepared by your firm and Tucker Alan, Inc.,  
7 under the heading "check kiting" --

8 MR. GIUFFRA: Can we go off the record?

9 (Discussion off the record.)

10 THE WITNESS: What's your question? You  
11 said look at pages 8 and 9?

12 BY MR. COLE:

13 Q The question is do you recall whether your  
14 firm did an analysis of whether claims might be  
15 asserted on a check kiting theory? And when I ask  
16 that question, I'm not asking about the ultimate  
17 question of whether it was determined that such  
18 litigation would be cost-effective, but I'm really  
19 asking whether you did an analysis of liability as a  
20 first step.

21 MR. GUTKIN: If I could clarify, have you  
22 seen this report before?

1 THE WITNESS: I believe that if this is the  
2 preliminary report that was drafted at the end of  
3 October of '94, I would have seen this report.

4 MR. GUTKIN: In its preliminary or final  
5 form?

6 THE WITNESS: In preliminary form. I may  
7 have seen it, but I may not have read it.

8 BY MR. COLE:

9 Q And what I'm getting at here is whether you  
10 have any personal knowledge of any analysis or review  
11 your firm did on the check kiting issue, because  
12 that's the issue that was raised in Ms. Lewis's  
13 referrals that Mr. Giuffra talked about.

14 A Our firm believed there may be a basis to  
15 proceed with the check kiting issue. My sense was  
16 Mr. Ericson was looking at it in terms of money  
17 flows. I also remember we retained for a period of  
18 time a group of forensic accountants, former agents,  
19 and one of their objectives was to look at potential  
20 check kite.

21 Q But you're not sufficiently familiar with  
22 the work to be able to give testimony as to what

1 conclusions were or were not reached on that issue?

2 A That's correct.

3 BY MR. GIUFFRA:

4 Q Let's go back to the proposal, at least the  
5 case plan. If I could direct your attention to  
6 page -- the first page of the memo, you are listed as  
7 one of the three authors of this memo?

8 A Yes.

9 Q Were you senior to Mr. Ericson at the firm  
10 at this point?

11 A Yes.

12 Q And that's based on years out of law  
13 school?

14 A It's based on --

15 Q What kind of a deal you've worked out.

16 A It's based on your general seniority as a  
17 partner in the firm and your general level of  
18 experience and years of practice.

19 Q And you would have reviewed and discussed  
20 this memo with Mr. Ericson at least?

21 A I believe that's correct.

22 Q Do you think you discussed it with

1 Mr. Patterson, or no recollection?

2 A I don't recall discussing this with

3 Mr. Patterson.

4 Q At least as of the time this memo was  
5 prepared, what was your understanding as to what your  
6 role would be in connection with this engagement?

7 A My understanding was we were in  
8 Washington. This was an investigative issue that I  
9 would have some input into -- would be able to  
10 have -- could offer some input or some insight into  
11 how investigations could be structured. And that  
12 there were a number of specific areas that we may  
13 well want to focus in on.

14 I think at this point in time, there was no  
15 allocation of specific responsibilities, other than  
16 the extent to which various teams were identified who  
17 handled various issues. And I'm looking through the  
18 memo to see whether there's any --

19 Q Page 5.

20 A Okay. There's liaison with other  
21 investigations, and there's a reference to special  
22 issues, including the effect of various settlements

1 and other discharges of liability.

2 Q Now, below that, there's a reference to  
3 depositions and financial condition discovery.

4 A That's correct. It also indicates  
5 depositions of financial condition discovery, "once  
6 the targets are identified we need to subpoena  
7 personal financial statements and depose them on  
8 related and merited subjects. The team will be  
9 Patterson, Stephens and Ericson."

10 Q You had an understanding that you would  
11 participate in the taking of depositions and  
12 interviewing witnesses?

13 A I expected that was possible, yes.

14 Q Did you think it was likely or didn't  
15 really know?

16 A Probably may not have been explicitly  
17 discussed but there probably was a general sense that  
18 the three of us would participate in a variety of  
19 those activities.

20 Q Depositions, interviews, drafting reports?

21 A Possible. I don't think at this point in  
22 time we knew whether we had a report or no report or

1 what it might be.

2 MR. COLE: Or lawsuits filed, perhaps.

3 MR. GIUFFRA: Or trying cases.

4 BY MR. GIUFFRA:

5 Q At least according to some billing records  
6 that we've received from your firm, it appears that  
7 between February '94 and January '95, the amount of  
8 time that you billed to this Madison matter  
9 declined. Do you know why that happened?

10 A I think if you look at my billing records,  
11 you will see most of my time was in February and  
12 March, or perhaps half of my time was in February and  
13 March. I had some time spent on this matter in  
14 April, May, June and July. During those periods of  
15 time, there was still continued focus on various  
16 efforts to obtain documents, 6(e) petitions. There  
17 were issues related to local counsel, Minority  
18 counsel, obtaining forensic accountants. There was  
19 the statute of limitations issues to examine, and  
20 there were a number of meetings related to general  
21 summaries of real estate transactions and sort of  
22 theories that might be available to examine these

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1 transactions or to pursue potential claims. I would  
2 say probably after August of '94 I had very little  
3 involvement in this matter.

4 Q And why was it after August of 1994 you had  
5 little involvement in this matter?

6 A I think that's probably -- as I indicated,  
7 most of my involvement, I think, is February, March.  
8 From that point on, there's maybe 15 or 20 hours a  
9 month for the next three or four months. That's  
10 apparently a staffing decision reached by  
11 Mr. Patterson who was in charge of the case.

12 Q Were there other matters at the firm that  
13 required your attention, such that you were not able  
14 to devote attention to the Madison matter after the  
15 February, March period?

16 A After February, March? I was involved in a  
17 number of other matters at this time. Whether or not  
18 that standing alone would suggest I wouldn't have  
19 sufficient time to devote to this, I doubt that would  
20 be the case.

21 I was spending considerable time on the  
22 Walde case for a block of time in the spring of '94.



1 I indicated that summary judgment decision was in  
2 May, so subsequent to that, I was involved in a  
3 variety of other cases.

4 Q Did you have any discussions with  
5 Mr. Patterson during 1994 about your role going  
6 forward on this matter?

7 MR. GUTKIN: Could we break it down a  
8 little?

9 BY MR. GIUFFRA:

10 Q Did you have any discussion with  
11 Mr. Patterson in the March, April, May period about  
12 staffing of this matter?

13 A Probably did. I say probably did because  
14 March, April, May we were having discussions about  
15 who would handle what transactions. And my  
16 impression from those was that most of the work was  
17 going to be moved to the West Coast, to Los Angeles  
18 and San Francisco, but that we should stay involved  
19 generally in some of the efforts on 6(e) and some of  
20 the other efforts that might require a Washington  
21 presence.

22 Q Do you have any understanding as to why the

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1 firm made the decision to shift more of the work to  
2 its West Coast offices?

3 A Again, you'll have to ask Mr. Patterson.

4 Q Did Mr. Patterson say anything to you about  
5 why he thought some of the work should be shifted to  
6 the West Coast office?

7 A Not really.

8 Q Did he say anything to you about shifting  
9 work to the West Coast office, anything?

10 A No. It was a process -- I mean, lawyers  
11 would be put on the case from the West Coast.  
12 Documents were moved to the West Coast.

13 Q Were the documents originally in  
14 Washington?

15 A Yes.

16 Q In your office?

17 A Yes.

18 Q Did you have associates in the D.C. office  
19 working on the matter in the February, March period?

20 A I think so, but we didn't have a lot of  
21 free associate -- extra associate time available, so  
22 I remember bringing somebody in from San Francisco

1 relatively soon, bringing somebody in from  
2 Los Angeles, but we did have some litigation  
3 associates that may have been available for some of  
4 the time, if needed.

5 Q Did you have any discussions with  
6 Mr. Ericson about staffing of the matter in the  
7 period February, March, April, May of '94?

8 A We had general discussions about work  
9 assignments, yes. I mean, he was doing this and  
10 that, questioning do you want to check out potential  
11 forensic accountants, but by this period, I would say  
12 the focus of the staffing was shifted to the West  
13 Coast.

14 Q Did you indicate an interest to  
15 Mr. Patterson or Mr. Ericson in working on the  
16 Whitewater portion of the investigation?

17 A No, I did not. No special indication of  
18 interest.

19 Q Any indication --

20 A I indicated I would do whatever anybody  
21 wanted me to do and assist wherever I could, but I  
22 didn't say well, I'll take this, you take that. I

1 did not do that.

2 Q Was there any discussion by either  
3 Patterson or Ericson whether you should work on the  
4 Whitewater aspect of the investigation?

5 A No, I don't think there was. If I remember  
6 correctly, sometime in the late spring is when the  
7 firm finally got around to looking at  
8 Whitewater-related issues, and at that point, there  
9 was a discussion about how to go about examining  
10 these documents, whether we would need forensic  
11 accountants to assist.

12 We looked at two or three or four potential  
13 forensic accountants. After some discussion about  
14 what would be the best mix and the best capacity or  
15 best focus of that work, the RTC retained some  
16 forensic accountants.

17 Q That would be the Tucker Alan firm?

18 A No, that was GOW & Associates. And  
19 Mr. Ericson and I would have had some general  
20 discussions about how do you go about examining the  
21 Whitewater area, and subsequent to that he took  
22 primary responsibility for that, when Tucker Alan was

1 retained.

2 BY MR. COLE:

3 Q Mr. Giuffra asked you if there was any  
4 discussion with Mr. Ericson or Mr. Patterson about  
5 whether you should work on the Whitewater aspects of  
6 the investigation, and you said there was not.

7 Was there any discussion about whether you  
8 should not work on the Whitewater aspects of the  
9 investigation?

10 A No, I don't think we had any particular  
11 discussions about you should work on this, maybe you  
12 shouldn't work on that. It didn't come down to that,  
13 didn't break down in that fashion.

14 BY MR. GIUFFRA:

15 Q Do you have any understanding as to why the  
16 staffing evolved as it did with regard to this  
17 engagement?

18 A I think you should ask Mr. Patterson that.

19 Q Do you have any understanding yourself?

20 A My understanding would be in terms of  
21 staffing, staffing patterns and available resources  
22 and control of case and those kinds of issues related

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1 to litigation.

2 BY MR. COLE:

3 Q By that -- you're not aware of any  
4 particular concerns regarding your involvement --

5 A That's correct.

6 Q -- personally in the matter?

7 A On the contrary, I think there was no  
8 discussion that there was any concern about my  
9 involvement, either from the client or from  
10 Mr. Patterson.

11 Q And you never raised any concerns yourself  
12 about your involvement in the Whitewater aspects of  
13 the investigation?

14 A I have to reflect on that. It's been two  
15 years ago now. There may have been some issue that I  
16 would have raised at some point that said after there  
17 was some public press accounts of this, where I may  
18 have made some comment that if in the interest of the  
19 firm or something, you think it's preferable, but I  
20 don't remember that issue being sharply focused.  
21 That issue may have been raised and nobody seemed to  
22 think it was something of any significant

1 consequence.

2 Q To your knowledge, the staffing decisions  
3 that were made internally at the firm were not  
4 affected by those considerations?

5 A I don't know all the considerations that  
6 went into the staffing decisions. You should ask  
7 Mr. Patterson that.

8 BY MR. GIUFFRA:

9 Q Did you have any discussions with  
10 Mr. Patterson about chemistry between yourself and  
11 Ms. Kulka?

12 A We had one discussion, but it was a very  
13 vague discussion, and I don't know if I'd put it  
14 quite in those terms, but it was about that he wanted  
15 to maintain the principal relationship with the  
16 client and -- I'd only had, I think, two meetings  
17 with Ellen Kulka. One I indicated to you early on in  
18 February, and then we had one, I believe, in late  
19 March -- Mr. Patterson attended, and it was  
20 Mr. Patterson and myself. I believe Minority counsel  
21 was present at that.

22 And that was at a meeting with Ms. Kulka.

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1 And then we had a subsequent meeting with Mr. Ryan  
2 and Mrs. Kulka, which was essentially a status  
3 meeting as to where we were on the general  
4 investigation and how it was being parsed and what  
5 transactions were being looked at. Mr. Patterson  
6 carried virtually all of that meeting for our side.  
7 I don't think I made any comments, if I remember  
8 correctly. There may have been a few comments, but I  
9 think most of the presentation was done by him.

10 BY MR. COLE:

11 Q Did the discussion --

12 A And I should say there was no -- there was  
13 no adverse chemistry in that meeting.

14 BY MR. GIUFFRA:

15 Q Did Mr. Patterson ever indicate to you that  
16 Ms. Kulka had said anything in any way critical of  
17 you to Mr. Patterson?

18 A I don't think so.

19 Q Did Mr. Patterson indicate that he had an  
20 impression that there might be a personality conflict  
21 between you and Ms. Kulka, at least to you?

22 A I don't think in those terms. I only had



1 two meetings with Mrs. Kulka, one in early February,  
2 and she had very definitive views at that meeting  
3 about wanting to maintain her relationship with  
4 Mr. Fiske. I was trying to suggest alternative ways  
5 to open up that channel of communication because  
6 initially it seemed quite important to get those  
7 records quickly.

8 That urgency on the part of the RTC, I  
9 would say, dissipated relatively quickly at some  
10 point because it became -- I think ultimately, the  
11 records weren't obtained or negotiations weren't  
12 concluded to obtain those records until nearly June,  
13 but that was one of the first issues on the table  
14 when we were retained. In fact, as I indicated, we  
15 were asked to do an overnight, all night, to put  
16 together a preliminary paper outlining how they might  
17 get access to those.

18 So that was really the only meeting where  
19 there was any direct discussion between myself and  
20 Ms. Kulka, and I wouldn't necessarily characterize  
21 that as meeting with -- it was sort of laying out  
22 options and suggesting that if we really wanted to

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1 get these records, we should start taking some action  
2 to do it.

3 Q But you have no understanding that  
4 Ms. Kulka said anything critical about anything you  
5 said at the meeting to anyone at Pillsbury -- let me  
6 rephrase it.

7 A Go ahead. Rephrase it.

8 Q Do you have any understanding that  
9 Mrs. Kulka might have said anything critical to  
10 anybody at Pillsbury about anything you said, your  
11 performance at that meeting?

12 A No.

13 Q Never discussed the subject with  
14 Mr. Patterson?

15 A I didn't discuss with Mr. Patterson -- I  
16 may have discussed with Mr. Patterson at some point  
17 that meeting with Ellen Kulka, but I don't remember  
18 having any specific discussion about that meeting  
19 with Mr. Patterson.

20 Q Was that meeting with Ms. Kulka a fairly  
21 friendly meeting, as far as you could tell?

22 A It seemed -- I thought it was a pretty

1 standard professional business meeting. Let's sit  
2 down. It was early in the engagement. We have a  
3 problem here. It's a significant problem. We need  
4 to get on the board quickly. We would like to get  
5 your advice and opinion and views on how to do this.  
6 You've dealt a lot with 6(e) grand jury issues.  
7 We've had a preliminary discussion at  
8 Mr. Gabrellian's office that we would like to go over  
9 and talk to Ellen Kulka about this because we need to  
10 figure out how to get these records.

11 She outlined she had sent a letter to  
12 Mr. Fiske and he declined her invitation to provide  
13 the records. She was looking for how we might  
14 proceed at that point.

15 I think I may have suggested that I would  
16 be willing to try to either prepare a petition or  
17 prepare a letter that would have the essential  
18 arguments that you would get, why we should get  
19 access to it, and may have suggested that I'd be  
20 willing to talk to Mr. Fiske to see if we could  
21 negotiate an arrangement to get those records. And  
22 she advised at that point in time she wanted to

1 maintain that relationship with Mr. Fiske to herself  
2 and that she would do that, but let's proceed and see  
3 if we can put the arguments together of what  
4 arguments we, the RTC would advance to obtain those  
5 documents. But the tone of it was a perfectly normal  
6 business call.

7 Q Did Ms. Kulka indicate to you why she  
8 wanted to maintain this relationship with Mr. Fiske  
9 rather than have the outside counsel handle the  
10 communications?

11 A No, but she seemed quite intent -- in fact,  
12 the RTC seemed quite intent to maintain that  
13 relationship because I, in fact, never did have any  
14 contact with Independent Counsel even though early on  
15 it was sort of an area that I was assigned to try to  
16 develop a means to obtain these records, but there  
17 was always some reason why someone else would make  
18 that contact.

19 Q Now, you indicated you attended a meeting  
20 with Mr. Ryan and Ms. Kulka. Mr. Ryan was the chief  
21 executive officer of the RTC at that time?

22 A I think he was acting head of the RTC at

1 the time if I remember correctly. It was sometime  
2 late March.

3 Q Do you know why that meeting was called?

4 A I believe that was a status meeting, where  
5 are we, we've been into this six weeks, where are we  
6 going? What do you know at this point in time? What  
7 is your current assessment of the facts, the  
8 potential theories of liability, those questions, and  
9 how do you intend to proceed on this investigation?

10 Q Just very briefly, what do you recall  
11 Pillsbury, Madison indicating to Mr. Ryan and  
12 Ms. Kulka about likelihood of being able to bring a  
13 civil action in connection with the Madison matter?

14 A I'm not sure, sitting here today, I can  
15 recall that we made any recommendation at that  
16 point. I think it more likely was here's seven  
17 potential real estate transactions. We can look at  
18 all of these globally. We can carve them up  
19 individually and analyze them. Whitewater is sort of  
20 sitting out here by itself. The question is does it  
21 tie into all these others through Madison.

22 And it's something that even if you think

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1 would not merit -- there might have been some  
2 discussion that maybe on its face is something that  
3 wouldn't merit a cost/benefit analysis, further  
4 inquiry, but a recognition that the agency wanted  
5 that question covered because it just felt that it  
6 had too much exposure without having it examined.

7 Q What do you mean by the agency thought it  
8 had too much exposure unless this was examined?

9 A I think the agency was feeling a  
10 substantial amount of political pressure in terms of  
11 how it conducted its activities.

12 Q With regard to Whitewater?

13 A Correct.

14 (Recess.)

15 BY MR. GIUFFRA:

16 Q Since February '94 when Pillsbury was  
17 retained in this matter, are you aware of any  
18 communications from the RTC with regard to what role  
19 you should play in this inquiry?

20 A Communications to who?

21 Q Communications from the RTC to either  
22 Patterson, Ericson or you.

1 A No, no specific communications.

2 Q Any general communications, whatever that  
3 means? Any general sense from the RTC with regard to  
4 what your role should be?

5 A A little general sense. On one occasion,  
6 sometime relatively early in the engagement,  
7 Mr. Gabrellian at a meeting in our office  
8 indicated -- I think we were having a large meeting  
9 with a lot of the players at some point -- because we  
10 were leaving that meeting -- indicated that I would  
11 be spending much of my time on the Walde matter and  
12 that I should give my primary attention to that  
13 matter and not this.

14 On one other occasion, Mr. Patterson, I  
15 think when he was back from a meeting with Ellen  
16 Kulka, he provided sort of a general discussion or  
17 description to stop by, and said he had a meeting.  
18 And I made some inquiry as to where was the locus or  
19 focus of the investigation going to be handled. And  
20 he indicated most of it would probably be going out  
21 to Los Angeles and San Francisco at that point, that  
22 we had other things we could do back here in

1 Washington, and they wanted -- he wanted to  
2 essentially staff the case that way.

3 Q Now, the Walde case you were pretty much  
4 concluded with your work on that in mid-'94?

5 A By May.

6 Q By May of '94?

7 A Right.

8 Q But no other communications from anybody in  
9 the RTC to anybody at Pillsbury about what role Jay  
10 Stephens should have in this matter or anything  
11 about --

12 A No, not directly. I mean, for example, we  
13 had -- when we were looking at forensic accountants,  
14 one group that was originally retained was a group of  
15 former FBI agents who were operating out of  
16 Washington. They were probably retained for about  
17 six weeks and then that retention was terminated, in  
18 part, when my -- part of the issues there may be they  
19 wanted to move the forensic accounting people to the  
20 West Coast and hire a West Coast firm rather than  
21 have the investigation handled out of Washington.

22 Q Do you have any further testimony to give



1 the Committee on why the firm made a staffing  
2 decision to do most of the work out of the West  
3 Coast?

4 A I think that's an issue you'll have to  
5 address with Mr. Patterson.

6 Q Did you ever take any depositions in  
7 connection with this investigation?

8 A No, I did not.

9 Q Ever conduct any witness interviews?

10 A No, I did not -- one exception. It really  
11 wasn't a witness interview, but in preparing the 6(e)  
12 grand jury access petition, I talked to one of the --  
13 it may have been one of the appraisers in Arkansas  
14 who was involved in one of the Madison real estate  
15 transactions, in order to get some information from  
16 them as to where certain records were located.

17 Q Would that be Robert Palmer?

18 A Whoever it was -- I think there's reference  
19 to it in the first petition we filed.

20 Q Do you have any understanding as to when  
21 the RTC disclosed outside of the agency the fact that  
22 your firm had been retained to handle the Madison

1 matter?

2 MR. GUTKIN: That was already asked, I  
3 think, wasn't it?

4 MR. GIUFFRA: No.

5 MR. GUTKIN: I thought he said he just knew  
6 from the press or something.

7 MR. COLE: I think you're correct. It has  
8 been asked, and that was the response, but I suppose  
9 Mr. Giuffra can ask it again.

10 THE WITNESS: The question was when it was  
11 disclosed outside of the agency?

12 BY MR. GIUFFRA:

13 Q Yes. Do you have any understanding as to  
14 when it was disclosed outside the agency?

15 A My first indication was press accounts that  
16 occurred sometime in late March when there was a  
17 flurry of activity about the RTC's retention.

18 Q I believe March of '94?

19 A Right. Now, whether they had disclosed  
20 prior to that, I don't know, but it was apparent from  
21 those public accounts, they had disclosed to someone  
22 outside of the agency, and obviously from hearings

1 that this Committee has held, it appeared there was a  
2 disclosure outside of the agency sometime in --

3 Q February?

4 A Was it February?

5 Q '94. Were you contacted by any reporters  
6 in the March '94 period about PMS's retention?

7 A Yes.

8 Q Who contacted you?

9 A I don't remember. There was a -- we had a  
10 standard little blurb to refer them to Steve  
11 Katsanos, who was the public information officer.

12 Q At the RTC?

13 A At the RTC, and there was at one point a  
14 press stakeout of our home when I was traveling on  
15 business in the case in late March. There probably  
16 were a lot of incoming phone calls. They were  
17 referred to the RTC.

18 Q About the fact that Jay Stephens was  
19 conducting investigation into Whitewater for the RTC?

20 A That's correct.

21 Q And you recall there were news accounts in  
22 leading newspapers around the country?

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1 A I do.

2 Q And --

3 A We were advised by the RTC that we should  
4 not discuss that engagement with anyone.

5 Q Now, did you have any discussion with  
6 anyone at the RTC about the news accounts regarding  
7 the retention of Pillsbury, and specifically you, to  
8 handle the Whitewater investigation?

9 A Yes.

10 Q And who did you speak with?

11 A At one of the meetings, it must have been  
12 the second meeting I had with Ellen Kulka and  
13 others --

14 Q This is the meeting with Mr. Patterson?

15 A I believe Mr. Patterson. It would have  
16 been the meeting we met before with Mr. Ryan because  
17 that would have been in late March, and I think press  
18 accounts were sometime around the third week of  
19 March, if I remember correctly, so this would have  
20 been shortly thereafter. I made -- I believe it was  
21 I who made some comment at that meeting that I hope  
22 we handled this matter in a professional way. The

1 RTC expected there would be a lot of press inquiries  
2 and tried to handle it in a professional manner and  
3 hoped that they saw it that way. And there was a  
4 general agreement that yes, we understood it and sort  
5 of apologized that there had been any undue press  
6 focus, but expressed a general sense that it had been  
7 handled in a very professional manner.

8 Q By Pillsbury?

9 A Well, I think it was more personally  
10 directed.

11 Q That you had handled it professionally?

12 A I was talking to Mrs. Kulka at the time.

13 Q She said you had handled it professionally?

14 A Yes.

15 Q And the fact you never spoke to any  
16 reporters about this?

17 A I made one comment, I think, when I was  
18 trying to get out of my garage, because I had a  
19 flight to catch to the West Coast and something  
20 else -- and I made some comment about we don't  
21 confirm, deny whether or not we've been retained,  
22 something like that.

1 Q Just so the record -- what's your general  
2 understanding of what the press stories were -- what  
3 was the general effect of the press stories back in  
4 the third week of March 1994?

5 A Effect on --

6 Q Strike that. Let me rephrase it.

7 What do you generally recall about the news  
8 accounts about Pillsbury's retention that were  
9 published in March of 1994?

10 A I recall -- what I personally recall is I  
11 thought I had gone to private practice so I could  
12 have a private life, but that I shortly -- hadn't  
13 been there that long when that appeared that was not  
14 the case. I recall that there was a focus that the  
15 RTC had retained Pillsbury and the former United  
16 States Attorney Jay Stephens to investigate the  
17 Madison Bank matter, and that had generated some  
18 concerns apparently at the White House and the  
19 Treasury Department, and that they had sought to take  
20 or did take certain actions in response to that.

21 Q Now, it would be fair to say in connection  
22 with this matter, the one thing the RTC wanted to

1 avoid was controversy going forward; right?

2 A I don't know what the RTC --

3 Q From your discussions with people at the  
4 RTC, did they indicate to you they wanted to avoid  
5 any further criticism of the agency going forward?

6 A The agency was very sensitive to criticism.

7 Q Do you know whether anyone at the RTC had  
8 any discussions with anyone at Pillsbury about the  
9 controversy that had ensued by virtue of the fact  
10 that you had been retained to work on this matter?

11 A I don't know of any such discussions. I  
12 don't know, in fact, any such discussions -- there  
13 may well have been discussions between Mr. Gabrellian  
14 or Mr. Patterson or someone, but I don't -- other  
15 than the comment I just indicated of my comment to  
16 Mrs. Kulka, and sometime substantially later when I  
17 think all the -- I don't know when all the reports or  
18 most of the reports were filed, Mr. Gabrellian called  
19 and advised me that he thought I had handled this  
20 matter in a very professional manner.

21 Q But you're not aware of any communications  
22 from the RTC to the effect that in light of the press

1 attention that had been focused on the fact that you  
2 had been retained and were working on the Madison  
3 matter, that perhaps other attorneys at Pillsbury  
4 should do the work going forward?

5 A I'm not aware of any specific conversation  
6 like that.

7 Q Any general conversations?

8 A No. I mean, it would be a matter of  
9 speculation on my part of looking at time spent and  
10 staffing changes, but I'm not aware of specific  
11 conversations.

12 Q You would agree that following these press  
13 accounts discussing the fact that you had been  
14 retained, the amount of work you did on this matter  
15 declined?

16 A That's correct.

17 Q Do you have any further testimony to give  
18 to the Committee on whether there's a connection  
19 between the press accounts and the decline in your  
20 work on this matter?

21 A I think the records have to speak for  
22 themselves. The bulk of my work was done in February



1 and March. Whether the reasons for the change in the  
2 amount of work is something that may well be staffing  
3 decisions, that Mr. Patterson could address.

4 Q Did you have any discussions internally  
5 within the firm about the fact that perhaps it might  
6 be best if you did a little bit less work on the  
7 matter because of these press accounts?

8 A No.

9 Q Did you discuss with Mr. Patterson --

10 A Nor was I ever told that I should do less  
11 work because of the press accounts.

12 Q Did you ever discuss the press stakeout at  
13 your house with Mr. Patterson?

14 A I probably did. I can't remember with  
15 Mr. Patterson or Mr. Ericson. At some point -- I  
16 think it was Mr. Ericson called and made some  
17 humorous comment about the press and made some  
18 comment about it. It may seem humorous to you, but  
19 it's rather inconvenient when you can't get out of  
20 your house on a Saturday and you need to go places  
21 and do things, and particularly since the client had  
22 imposed a no comment rule, as well as the firm as a

1 consequence, you could neither comment as to the  
2 truth of any situation or defend yourself or make any  
3 statement other than really "we can't make any  
4 statement."

5 Q As of the time of these press accounts,  
6 which would be the third week of March 1994 -- strike  
7 that.

8 Just prior to these press accounts in the  
9 third week of March 1994, what was your understanding  
10 of the role you would play going forward on this  
11 matter?

12 A My understanding was that Mr. Patterson,  
13 myself and Mr. Ericson would carry the bulk of the  
14 work in terms of supervising various aspects of the  
15 investigation and that we would obviously have a  
16 variety of associates working with us to analyze  
17 various issues and aspects of the broad range of  
18 transactions.

19 Q Were the documents that had been collected  
20 by the -- that were collected in the Washington  
21 office moved to the West Coast before or after the  
22 press accounts discussing the fact that you had been

1 retained to work on this matter?

2 A Some of the documents stayed -- I should  
3 tell you, many of the documents stayed in the  
4 Washington office. Subsequently, there were copies  
5 of many of these documents. Most of them were moved  
6 to Los Angeles and some of them were moved to  
7 San Francisco. I believe that all occurred sometime  
8 probably -- certainly after March of '94.

9 Q April, May?

10 A It probably started in the spring, summer  
11 when it became apparent there was -- the locus of  
12 work was going to be in Los Angeles and  
13 San Francisco.

14 Q So the decision that the locus of the work  
15 that would be done by Pillsbury, Madison on this  
16 matter -- strike that.

17 The decision that most of the work on this  
18 matter would move from Washington to the West Coast  
19 was made after the press accounts?

20 A I don't know the answer to that.

21 Q Were you advised that the bulk of the work  
22 would be done by the West Coast offices after the

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1 press accounts or before the press accounts?

2 A I was not advised of that fact. It became  
3 an operational fact as to who was carrying what load  
4 and who was analyzing which transactions, who was  
5 asked to do what tasks and who continued to have  
6 contact with the client.

7 I did not have any -- I take that back. I  
8 had no further contact with Ms. Kulka after the late  
9 March meeting. I did have some contacts with the  
10 client throughout April, May, June, particularly as  
11 we were discussing forensic accountants, because we  
12 had them meet with a couple of different teams of  
13 forensic accountants, or we at least explained and  
14 vetted a couple of different groups to them.

15 Q But at least it became an operational  
16 reality that most of the work would be done on the  
17 West Coast after these press accounts in the third  
18 week of March?

19 A After -- well, certainly after March. It  
20 may have been even apparent earlier in March. I  
21 mean, at some point, the urgency and push to get the  
22 records from Mr. Fiske, which was of some urgency,

1 that changed sometime around the first part of  
2 March. And it became apparent that the RTC was going  
3 to essentially manage that aspect of the case,  
4 although they wanted us to continue to refine and  
5 revise our petition to the court to gain access to  
6 these records.

7 Q Did you have any discussions about the  
8 press accounts with Mr. Ericson?

9 A Yes, I think I did indicate -- remember, I  
10 think I indicated earlier that he made some comment  
11 about the press accounts, and I made some comment  
12 back to him about our house being staked out.

13 Q Anyone else, though?

14 A Oh, I probably had -- probably made some  
15 comments to Mr. Patterson. You're talking about  
16 March press accounts? I may have made some comments  
17 to other people as well.

18 Q Was there any discussion within the firm  
19 about the fact that perhaps it was best if you were  
20 not associated too closely with this report because  
21 then the firm might come under some criticism going  
22 forward?

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1 A I'm not aware of any of those discussions.  
2 There may have been, but I'm not aware of any.

3 Q No one had such discussions with you?

4 A That's correct.

5 Q And am I correct you would have learned of  
6 the -- strike that.

7 Did there come a time when you learned of  
8 Mr. Stephanopoulos's phone call with Mr. Steiner on  
9 February 25, 1994?

10 A Yes.

11 Q In which you were mentioned?

12 A Yes, there were public accounts about that.

13 Q And that would have been in the same March  
14 '94 period?

15 A That's correct.

16 MR. BEN-VENISTE: February or March? What  
17 did you say?

18 MR. GIUFFRA: I said it was March '94.

19 THE WITNESS: Public accounts were in March  
20 '94.

21 MR. GIUFFRA: March '94. The conversation  
22 was the 25th of February, based on hearing testimony

1 we have back in August of '94.

2 BY MR. GIUFFRA:

3 Q Now, during the summer of 1994, there were  
4 Congressional hearings at which there was discussion  
5 of statements made by Mr. Stephanopoulos as well as  
6 diary entries of Mr. Steiner. Do you recall that?

7 A I do.

8 Q Did you have any discussion with anyone at  
9 Pillsbury about that testimony?

10 A I may have. We got general press  
11 accounts. The RTC would do press clippings and send  
12 them around, so there may have been some general  
13 discussion about that. I don't remember anything  
14 specifically focused on this investigation and  
15 that -- other than general conversations about the  
16 nature of those contacts and the conduct.

17 Q Do you know whether there were any  
18 discussions between persons at the RTC and either  
19 Mr. Patterson or Mr. Ericson about the testimony of  
20 the Congressional hearings in '94?

21 A I don't know.

22 Q Any discussion to the effect that you made

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1 a mistake of hiring Pillsbury or any --

2 A I'm not aware of any discussions like that.

3 Q Nothing internally along those lines?

4 A That's correct.

5 Q Did there ever come a time when  
6 Mr. Patterson advised you it was not necessary for  
7 you to attend meetings at the RTC with him or  
8 Mr. Ericson?

9 A Yes, but not that directly. I became aware  
10 they were scheduling meetings at the RTC in  
11 Washington. You know, the question was do I need to  
12 be available? No, no reason for you to go, no reason  
13 for you to attend.

14 Q Did anyone indicate to you why it wasn't  
15 necessary for you to attend these meetings at the  
16 RTC?

17 A No.

18 Q Were these meetings held before or after  
19 the March --

20 A After.

21 Q -- press accounts?

22 A I think I attended all the meetings that



1 were meetings with the general counsel in February  
2 and March.

3 BY MR. COLE:

4 Q Those would be the two meetings you  
5 described earlier?

6 A I believe so. I'm not aware of any other  
7 meetings with the general counsel and members of our  
8 firm.

9 BY MR. GIUFFRA:

10 Q Did you attend all the meetings in February  
11 and March between your firm and, for example,  
12 Mr. Gabrellian, face-to-face meetings in Washington?

13 A Probably. It's possible there was an  
14 occasional meeting when I was doing something else  
15 and Mr. Ericson was back and he would have met with  
16 Mark Gabrellian for an hour and something. But as a  
17 general matter, I was present at all the meetings  
18 with the client in February and March.

19 Q And then after March, you stopped going to  
20 the meetings with the client?

21 A I believe so. I should say I had  
22 subsequent meetings with Mr. Gabrellian --

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1 Q On particularized matters you were working  
2 on?

3 A Yes, for example, on the retention of  
4 forensic accountants. There may have been occasional  
5 meetings with him. But as a general rule, the client  
6 contact shifted to Mr. Patterson, and Mr. Patterson  
7 and Mr. Gabrellian developed that interface.

8 Q And do you have any further testimony to  
9 offer as to why there was a shift in that interface  
10 from Mr. Patterson to you?

11 A You'll have to ask Mr. Patterson.

12 Q Do you have any belief yourself as to why  
13 it happened?

14 A I would only be speculating, and that  
15 doesn't have any basis in fact.

16 Q Since the rules of evidence don't apply  
17 here at our hearings, do you have any belief as to  
18 why the client interface shifted?

19 MR. GUTKIN: Do you really want him to sit  
20 here and guess?

21 BY MR. GIUFFRA:

22 Q Do you have any reason, based on your

1 knowledge of all these facts?

2 A You know, it would only be -- I think you  
3 should ask Mr. Patterson. I really do.

4 Q Do you think perhaps that the press  
5 accounts had something to do with the fact that your  
6 role in this matter diminished after March of 1994?

7 MR. GUTKIN: I'm going to object. It calls  
8 for speculation.

9 MR. GIUFFRA: That's fine.

10 THE WITNESS: It would be speculation. I  
11 don't know that I would say it was press accounts or  
12 whether it was other activity that was going on in  
13 the agency.

14 BY MR. COLE:

15 Q So we're clear, your testimony is that no  
16 one from the RTC and no one from your firm expressed  
17 any concern to you about the press accounts?

18 A Repeat the question.

19 MR. GIUFFRA: Let's have her read it back.  
20 It's a good question.

21 (The reporter read the record as requested.)

22 THE WITNESS: I think it's fair to say they

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1 did not express concern. There were discussions, as  
2 I said, with Mrs. Kulka about them. She acknowledged  
3 that she thought they were handled professionally.  
4 Mr. Gabrellian on a couple of occasions made some  
5 reference, and subsequent to that, I indicated much  
6 later advised that he was -- he thought I had handled  
7 this whole matter very professionally and in a manner  
8 which he thought was, in his view, something which he  
9 thought was highly professional, in his view. And  
10 with our own firm, we probably had chitchat about  
11 what's this or what's that press account, but there  
12 was never any discussion that as a result of press  
13 statements, we should take some action to change the  
14 staffing pattern that I recall.

15 I mean, it may well be that they didn't  
16 have those discussions with me, but that somebody  
17 else had those discussions, but I don't recall those  
18 kinds of discussions.

19 MR. COLE: That's what I understood you to  
20 say.

21 BY MR. GIUFFRA:

22 Q Just so we're clear on this, did anyone at

1 the RTC express any concern, as far as you know, to  
2 either yourself or anyone else at Pillsbury about the  
3 press accounts generally?

4 A I don't think so.

5 Q In other words, there had been these press  
6 accounts. They had been widely publicized. They  
7 were critical of the fact you had been retained. Was  
8 there any discussion that these press accounts were  
9 unfair, anything along those lines?

10 MR. BEN-VENISTE: God forbid the press  
11 should be unfair.

12 THE WITNESS: I think the answer to that is  
13 there was some general discussion about it. I  
14 wouldn't have interpreted that discussion as being  
15 critical, at least in the meetings that I had or  
16 discussions I had. I mean, there may have been an  
17 expression about the press may be understanding that  
18 the agency was coming under even greater scrutiny  
19 than it was before. Whether in their own private  
20 consultations the agency was saying -- reflecting  
21 that they wanted to be, that they had concern about  
22 it, they didn't reflect those concerns to me

1 personally.

2 (Pause.)

3 BY MR. GIUFFRA:

4 Q Just the last answer was a little unclear.  
5 Are you speculating as to what concerns the RTC may  
6 have had or did anyone indicate to you they had some  
7 concern about these press accounts?

8 A No one indicated to me from the RTC that  
9 they had any specific concerns or special concerns  
10 about the press accounts. I mean, the fact that they  
11 were discussed, I mean, the question is is the fact  
12 they were discussed, does that mean they had a  
13 concern about it? That's a matter of judgment or  
14 opinion.

15 Q Was that your understanding, the fact that  
16 it was raised at the meetings?

17 A Well, I think I raised it with Mrs. Kulka  
18 to make sure the air was clear. I said you  
19 understand that we did not raise these matters. The  
20 press raised these issues. I trust you understand we  
21 handled them professionally and sought to do so  
22 professionally and respond as we were advised. And

1 she said no, that's fine, I appreciate the way you've  
2 handled that, Mr. Stephens. Thank you.

3 Q Was there any discussion --

4 A Mr. Gabrellian may have had a discussion  
5 with me generally about that. He may at one point  
6 have made some general reference to this is -- too  
7 bad this has all gotten blown out of perspective or  
8 something like that. Our sense was as former United  
9 States Attorney you could be helpful in doing an  
10 investigation, or something like that, in this  
11 matter.

12 So there was a general discussion, but not  
13 a specific, you know, we really should sit down and  
14 figure out does this somehow or another impact on  
15 this investigation.

16 Q Approximately how much time was spent at  
17 this meeting discussing the press accounts?

18 A 30 seconds, but it was sort of an  
19 introductory comment after a lot of things had  
20 happened in the previous week.

21 Q You just mentioned that Mr. Gabrellian had  
22 said there had been internal discussions at the RTC

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1 by virtue of the fact that you were a former U.S.  
2 Attorney you could be helpful in the investigation.  
3 Did you have any other communication with anyone at  
4 the RTC along those lines?

5 A I'm not sure I would characterize what you  
6 just said. You said something about internal  
7 discussions --

8 Q That it was his belief.

9 A I'm sorry, your question was did I --

10 Q Did you have any discussions with anyone at  
11 the RTC in which it was communicated to you that you  
12 could be helpful to the investigation by virtue of  
13 your background as a former United States Attorney?

14 A I don't think I had any specific  
15 discussions about that, and when the staffing  
16 arrangements were being identified, I don't know  
17 whether Mr. Ericson attached all our resumes or bios  
18 or not. If he did, mine would have indicated that I  
19 served in that capacity.

20 My sense was from my first meeting over  
21 there, that they were aware I had served as United  
22 States Attorney here in Washington because



1 Mr. Gabrellian lives here and Mr. Igo and Mr. Arbit  
2 all live here, so they were probably aware of that.

3 Q Did you have any understanding by virtue of  
4 the fact that this investigation was going to be  
5 conducted while a criminal investigation was going to  
6 be conducted by the Independent Counsel, that it  
7 might be helpful, at least as far as the RTC saw it,  
8 that you be involved by virtue of your experience as  
9 U.S. Attorney?

10 A I think there was a general sense that, A,  
11 I was somebody who knew how to do an investigation,  
12 B, there was a parallel criminal investigation  
13 ongoing, that it would be helpful -- that's why one  
14 of the first assignments out of the box was to  
15 address the question of access to grand jury material  
16 under 6(e). So there was a sense that you might well  
17 have some understanding of how Rule 6(e) works and  
18 you also understand the criminal investigative  
19 process and how these two investigations might  
20 interface, yes.

21 Q Did you have any discussions along the same  
22 line with anyone in the firm, for example, with

1 Mr. Patterson?

2 A I don't remember talking to Mr. Patterson  
3 about the staffing until much later, and my memory  
4 may not be accurate there, but my memory is I really  
5 didn't talk to Mr. Patterson until sometime  
6 mid-March. But it may well be those conversations  
7 were with Mr. Ericson because it would have made  
8 sense to ask me to take a look at the 6(e) questions  
9 because it was one of -- I remember that one of the  
10 first things Mr. Gabrellian wanted looked at on an  
11 emergency basis was what rights do we have under Rule  
12 6(e) to get access to these materials, and can  
13 someone put something together and have it to me by  
14 Friday or Thursday.

15 Q Any discussions within the firm about the  
16 fact that -- strike that.

17 Any discussions within the firm that  
18 perhaps one of the reasons you had been retained --  
19 PMS had been retained was because of the fact that  
20 you had been U.S. Attorney?

21 A Any discussions with whom?

22 Q With either Ericson, Patterson, after you

1 had gotten the business?

2 A I don't remember specific discussions like  
3 that after we got into the business, but they both  
4 knew --

5 Q You were a marketing asset in terms of  
6 getting the business, right, your prior experience?

7 A I would think so.

8 MR. COLE: Do you expect him to say no to  
9 that question?

10 BY MR. GIUFFRA:

11 Q Do you have any understanding as to whether  
12 there were any communications between the Treasury  
13 Department and the RTC about you or Pillsbury,  
14 Madison?

15 A Public accounts only or hearing accounts  
16 only. I have no separate --

17 Q No one either told you nor were you a party  
18 to any conversations about such communications?

19 A That's correct.

20 Q Within your law firm, when there are a  
21 number of partners working on a matter and a number  
22 of associates, and the matter is handled in a number

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1 of different offices, do you have a procedure whereby  
2 you route materials related to that matter, for  
3 example, complaints, deposition transcripts, things  
4 along those lines?

5 MR. GUTKIN: You mean a set procedure?

6 BY MR. GIUFFRA:

7 Q Normally in a matter, do you have a totem  
8 pole system where you would send all the depositions  
9 in the case to all the lawyers working on the case?

10 MR. COLE: That would be so they can all  
11 bill time on the matter?

12 MR. BEN-VENISTE: Everybody can read your  
13 depo.

14 THE WITNESS: I'm not sure we -- I'm not  
15 sure we have a standard operating procedure for  
16 that. My sense was people who are working on a  
17 particular matter generally get copied on relevant  
18 materials to those matters. I certainly seek to do  
19 that but it's an ad hoc basis. If I'm working with  
20 five people, if it's something they're involved in, I  
21 try to --

22 BY MR. GIUFFRA:

1 Q For example, if you're one of the partners  
2 working on a matter and there were communications  
3 with the client, would you normally expect to receive  
4 copies of such communications?

5 A I can't answer that in the sense that you  
6 might, as a partner in a law firm, like to obtain  
7 copies of all those communications. Whether, in  
8 fact, you are advised of every communication depends  
9 on the matter and how complex --

10 Q There's no procedure at the firm along the  
11 lines that correspondence with the client should be  
12 communicated to all partners working on the matter?

13 A I was copied on a lot of memoranda that  
14 went through. I know I was not copied in on many of  
15 the client communications, but again, Mr. Patterson  
16 was probably having daily communications with the  
17 client. Once in a while, I would --

18 BY MR. COLE:

19 Q And Mr. Patterson was both the senior  
20 partner on this matter and the partner with primary  
21 responsibility for contacts with the client?

22 A That's where it ended up, yes.

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1 Q In the period February, March 1994, were  
2 you copied on, as far as you know, all communications  
3 with the RTC?

4 A Yes, as far as I know. It was very much an  
5 inclusive process.

6 Q And after March 1994, you ceased being  
7 copied on most communications with the client, or did  
8 you receive any communication?

9 A I think there were a lot of oral  
10 communications with the client. There were meetings,  
11 there were telephone calls. I was copied on some of  
12 those communications. I mean, sometimes there would  
13 be a letter sent to the client on some aspect; I'd be  
14 cc'd on that.

15 Q Was it rare that you would be cc'd on  
16 communication to the client?

17 A It's hard for me to make that judgment  
18 because I don't know how many communications there  
19 were with the client by other parties.

20 Q What was the frequency with which you would  
21 receive -- after March of '94, what was the frequency  
22 with which you would receive documentation from

1 either the client or Mr. Ericson or Mr. Patterson  
2 concerning the Madison matter?

3 A For a period of time in '94, I would get  
4 copies of memoranda that would analyze legal issues  
5 or transactional issues. Probably by the summer of  
6 '94, that was infrequent. And by September, an  
7 occasional "can you check out this" or "do that" or  
8 "would you do that" or "would you serve this  
9 subpoena" or whatever.

10 Q Just targeted communications would be  
11 directed to you?

12 A Targeted communications. I think  
13 Mr. Ericson cc'd me on the monthly bill communication  
14 to the client, but didn't always -- didn't attach the  
15 billings.

16 Q At your firm, do you have a system whereby  
17 lawyers are assigned to specific matters, like  
18 documentation saying RTC, Madison, partners Ericson,  
19 Patterson --

20 A There's an opening case memorandum that's  
21 prepared that indicates who the managing partner is,  
22 who the billing partner is, who are the individuals

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1 working on the matter and identifies them by name.

2 Q On the opening case memorandum, how are you  
3 identified?

4 A I was identified as one of the three  
5 partners working on the matter. Mr. Ericson, I  
6 think, was billing partner, and I think that's how --

7 Q Was Patterson listed as partner in charge?

8 A I believe Mr. Patterson was listed as  
9 managing partner on the matter, but I'm not sure --  
10 I'm not sure of that. I'm not sure I've seen that  
11 specific memo.

12 Q Just in terms of internal recordkeeping at  
13 the firm, do you have other documentation indicating  
14 going forward what lawyers are working on particular  
15 matters?

16 MR. GUTKIN: That's a little overbroad.  
17 Are you including bills, memos? Is there any way to  
18 break it down?

19 MR. GIUFFRA: I'm happy to do that.

20 BY MR. GIUFFRA:

21 Q Are there any sort of documents circulated  
22 within the firm indicating which lawyers are working



1 on which matters?

2 A We have new business memoranda that are  
3 generally circulated. It indicates the client, the  
4 matter and who's working on it.

5 Q What about any other documentation as  
6 you're going forward, so we'll say a year into a  
7 matter. Is there any sort of record kept as to who's  
8 working on the matter?

9 A Only the billing records.

10 Q And I'm correct that you stopped billing  
11 any time on this matter in January '95?

12 A Yes. Effectively, I stopped in November of  
13 '94, but in looking back, I see I must have read  
14 something for three hours or so in January of '95.  
15 And occasionally, I would need to do something to  
16 move documents or shift documents or respond or give  
17 some guidance to a paralegal who was trying to  
18 respond to a request from the RTC or the Hill or  
19 something.

20 Q So it would have been four hours in January  
21 '95, an hour and a quarter in December '94 and 17  
22 hours in November. Does that sound right?

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1 A Uh-huh, more or less.

2 Q Were you cc'd on drafts of the various  
3 reports that Pillsbury prepared?

4 A No, not as a matter of course.

5 Q Do you know why that was?

6 A No.

7 Q Did you ever ask to see the drafts?

8 A I may have made some inquiry when  
9 Mr. Ericson would call or say something that, he was  
10 talking about the report he was doing or writing, and  
11 I may have made some comment, do you have an extra  
12 copy of that or something like that. And sometimes  
13 he'll say yeah, I'll get you one. Sometimes I would  
14 get it after it was filed.

15 On one occasion, I got a report that he  
16 asked me to take a look at and that was in either  
17 late October or early November of '94.

18 BY MR. COLE:

19 Q Was that the preliminary report on  
20 Whitewater?

21 A I believe that's the one it was.

22 Q Did you review that report --

1 MR. GIUFFRA: Wait. Let me get back to  
2 it. That's obviously where I'm going. You can  
3 answer the question.

4 MR. BEN-VENISTE: Did you review the  
5 report?

6 THE WITNESS: I think I read most of the --  
7 I think that was the first draft or one of the  
8 first -- I don't know. It was an early draft of the  
9 report on Whitewater, and it was a draft I read --  
10 that came to me in early November, late October.

11 BY MR. GIUFFRA:

12 Q Do you recall how much time you would have  
13 spent reviewing this draft?

14 A As I look back, I think my total time  
15 looking at the report was somewhere around 10, 12  
16 hours, so I must have read part of it one day and  
17 part of it another day, or something like that.

18 Q Did you give any -- did you mark up the  
19 report with comments?

20 A I don't believe I did.

21 Q That would be your normal procedure with  
22 regard to a report that you were actively involved

1 in?

2 A I'll tell you, I didn't view getting this  
3 report as analyze this report, advise us how you see  
4 these issues squaring with the factual analysis we've  
5 done. It was sort of read through it, do you have  
6 any general impression or general comments.

7 Q And that was a request from Mr. Ericson?

8 A Correct.

9 Q You would not have reviewed any of the  
10 financial and economic support provided by the Tucker  
11 Alan firm?

12 A Is that in the report?

13 Q There's a discussion of it, but did you  
14 review --

15 A I remember seeing charts and graphs with  
16 nice colors and money flows. If that's in this  
17 report, then I probably saw that. If it's not --

18 Q Did you have any communications with Tucker  
19 Alan?

20 A Briefly. I was in San Francisco in August  
21 of '94 on other business, and I stopped by and saw  
22 Mr. Ericson, and he took me by and we met some of the

1 Tucker Alan people who were working in an office  
2 there.

3 Q Did you have a subsequent discussion with  
4 them about the work they were performing?

5 A Marginally in the sense that they showed  
6 me -- they had a couple of computers set up and they  
7 had three or four people and they had a chart on the  
8 wall and they were describing sort of what they were  
9 doing. I probably spent a half hour with them.

10 Q Did you review any of the -- in the course  
11 of your review of this draft report, did you review  
12 any of the depositions, interviews or documents cited  
13 in the report?

14 A No.

15 Q And in the ordinary course, if you were  
16 asked to comment on such a document, give more  
17 specific comments, you would have reviewed those  
18 materials?

19 A If I had been asked to provide an analysis  
20 of this report, I would have gone back to the base  
21 materials, the base factual materials and looked at  
22 those and determined whether or not the report

1 actually -- accurately reflected those materials. I  
2 was looking through it, in part, to give  
3 Mr. Ericson -- he had asked for any general comments  
4 about what do you think about this.

5 Q Did you give Mr. Ericson some general  
6 comments?

7 A I think I gave him two or three comments.

8 Q What were the comments you gave to  
9 Mr. Ericson?

10 A I think in one case, I said something about  
11 his sense of humor seemed to be reflected in the  
12 report. I think I commented that the report failed  
13 to take into account sort of the global picture of  
14 what was going on at Madison, and that by separating  
15 out each financial transaction or each real estate  
16 transaction, it failed to convey the true pattern or  
17 apparent pattern of activity that was going on at  
18 Madison from my earlier recollection of memos and  
19 review of documents in the February, March, April  
20 period.

21 My sense was if you just isolated  
22 Whitewater, that it didn't convey the true picture of

1 what may be the potential civil liability conduct of  
2 people responsible for managing the bank. I think I  
3 also --

4 Q What did you specifically -- do you have  
5 anything further you might have conveyed to  
6 Mr. Ericson with regard to how the report failed to  
7 convey the pattern of activity that you had  
8 identified earlier in the February, March '94 period?

9 A Only that my sense was in looking at this  
10 investigation earlier on, it was the pattern of  
11 activity that held some potential interest for  
12 putting the pieces together about what the  
13 investigation was about, how Madison was managed, how  
14 the money flowed from Madison, and that there were a  
15 dozen different real estate deals. If you looked at  
16 each one separately in isolation, it might not be  
17 especially interesting, or you might run into dead  
18 ends, but it might be a very productive way to look  
19 at the whole matter by looking at a mosaic of how all  
20 these pieces fit together as part of a general  
21 pattern of managing the bank.

22 Q Did you say anything more specifically to

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1 Mr. Ericson?

2 A I had a couple of other -- I had a  
3 couple --

4 Q No, just about how the report may have  
5 conveyed in a better way --

6 A I think I said generally the report doesn't  
7 address the broader issues here and the pattern of  
8 activity that sort of seemed to be there flowing out  
9 of Madison. It looks at this transaction in  
10 isolation.

11 I mean, I wasn't necessarily aware at the  
12 time there were going to be other reports or whether  
13 this was going to be the only report or how this  
14 report was going to tie into other reports. Standing  
15 alone, if this was the firm's report on Madison, it  
16 would be -- it wouldn't really capture -- A, it  
17 wouldn't capture the conduct.

18 But I think more significantly from an  
19 investigator's point of view, I think my view was  
20 that you wanted to look at the constellation of  
21 activities and see if there were some interlocking  
22 relationships to determine whether or not there was a



1 whole series of money flow and movement, as well as  
2 the relationships of people rather than looking at --  
3 we'll look at Campobello. Campobello standing alone  
4 may or may not look problematic, but if you tie it  
5 into Castle Grande and 1308 or whatever the other  
6 transactions are, it begins to take on a pattern of  
7 how money was moved from one account or one  
8 transaction or to friends and associates. It would  
9 look very differently.

10 BY MR. COLE:

11 Q The report that you reviewed and gave this  
12 comment on was a draft report in late October or  
13 early November 1994?

14 A Correct.

15 Q And do you know how that report changed --  
16 that draft report changed or differed from the final  
17 report that was issued in April 1995?

18 A Not specifically, no. I don't know how it  
19 was changed. I didn't follow -- I haven't --

20 Q You didn't follow through and see whether  
21 the report was changed to reflect your comments in  
22 any way?

1 A Correct.

2 BY MR. GIUFFRA:

3 Q Did Mr. Ericson say he agreed with your  
4 comments and would make the changes if you  
5 suggested -- that particular change?

6 A I don't know that he said that. Frankly, I  
7 can't remember what he said. I sort of said I have  
8 three or four thoughts, and he said what are your  
9 three or four thoughts. Here they are. It may be we  
10 can't do that in this report. I can't remember  
11 exactly what he said in response to that.

12 Q Did you also discuss with him the fact that  
13 perhaps there was a need to look at money flows from  
14 other financial institutions into Whitewater?

15 A That was the thrust of looking at the  
16 global picture. If you take one real estate  
17 transaction standing alone, it may not give you an  
18 accurate picture of what was actually being done out  
19 of Madison. You could almost look at Madison as the  
20 core institution, and there were lots of transactions  
21 that were flowing from that. The question is are  
22 these individual transactions or are they all linked

1 together somehow or another.

2 Q You thought there was perhaps a need to  
3 look at whether the fraudulent activity involved a  
4 number of financial institutions, not just Madison?

5 A A number of transactions that Madison was  
6 involved in.

7 Q And other financial institutions?

8 A It could potentially involve other banking  
9 institutions as well if there were money and  
10 movements back and forth, yes.

11 Q When you did your initial analysis back  
12 in --

13 MR. COLE: Before we leave this, can I ask  
14 a follow-up question about this?

15 MR. GIUFFRA: Sure.

16 BY MR. COLE:

17 Q Your firm did review all of the substantial  
18 transactions -- real estate transactions involving  
19 Madison Guaranty other than the ones that were  
20 reviewed by Jordan & Keys; is that not correct?

21 A I can't answer that question. I'm not  
22 exactly sure of all the transactions.

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1 Q You know your firm reviewed the Castle  
2 Grande transactions?

3 A Correct.

4 Q The 1308 Main Street?

5 A I believe so.

6 Q The role of the Rose Law Firm?

7 A Correct, I know that.

8 Q The Frost & Company litigation?

9 A I'm not sure of that.

10 Q Do you have any reason to believe that  
11 Mr. Patterson and Mr. Ericson, in reviewing the  
12 various Madison transactions, failed to consider  
13 whether they were part of a larger pattern or scheme  
14 of activity?

15 A I have no basis to --

16 MR. GIUFFRA: One way or the other.

17 THE WITNESS: One way or another to comment  
18 or speculate what they did or did not do.

19 BY MR. COLE:

20 Q You're not suggesting the work your firm  
21 did was incomplete --

22 A I'm addressing my comment in reading this

1 report, I thought looking at the issues which I  
2 understood the RTC asked us to look at, it would be  
3 helpful in explicating what was going on here to see  
4 if there were interlocking pieces.

5 Q And were you involved in any discussions  
6 with the RTC about whether to prepare one global  
7 report that covered all issues and all transactions  
8 or a series of reports focusing on particular  
9 transactions?

10 A There was a discussion -- I'm trying to  
11 think back to that late March meeting. There would  
12 have been some discussion as to these are the  
13 transactions we want to look at. I think the  
14 decision that needed to be addressed at that point as  
15 to how is the most cost-effective way to do this,  
16 well, some of these transactions turn out to be of no  
17 consequence and therefore, we shouldn't spend three  
18 months examining them.

19 I don't think a decision was made at that  
20 meeting that they should all be separate reports and  
21 not tied together. I think it was how can you  
22 efficiently look at a series of transactions. You

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1 don't want to go down too many dead ends, so you try  
2 to identify those that looked more fruitful at the  
3 outset, examine those and then make a judgment about  
4 is there something that you would put together here,  
5 an overarching picture, or you sort of file a report  
6 on each individual transaction. And I don't think I  
7 was present when RTC made that decision.

8 BY MR. GIUFFRA:

9 Q Is it your understanding that was a  
10 decision that RTC made?

11 A Well, they were the client, so they could  
12 ask for the product that they wanted.

13 Q Well, for example, was one of your concerns  
14 the fact that the Clintons might have other  
15 relationships with McDougal other than strictly the  
16 Whitewater relationship that might not be reflected  
17 in this report?

18 A It wasn't so much related to the Clintons  
19 as it was really to the idea of whether you had a  
20 pattern or series of transactions that were  
21 interlocking. Whitewater would have been only one of  
22 potentially six or eight or 10. And in looking at

1 the civil liability, the question was -- and perhaps  
2 I was bringing a little mind-set of the criminal  
3 investigation to this as well. If you look at one  
4 transaction, maybe, maybe not, it's significant  
5 enough to merit going forward.

6 On the other hand, if it is part of a  
7 pattern of activity, that may well change the  
8 calculus significantly, and if you can put together  
9 whatever -- if Madison essentially were -- you may  
10 have a potential RICO kind of investigation where you  
11 have a series of fraudulent transactions headed by a  
12 group of people, the head of a particular financial  
13 institution -- I don't mean to suggest where the  
14 conclusion would have gone or did go, but I thought  
15 in examining this report, it didn't suggest that  
16 somehow this might fit together in a broader pattern  
17 of activity, and maybe it concluded it didn't. Maybe  
18 it concluded it was totally isolated in which --  
19 that's where the facts go. But I was looking at this  
20 report in terms of just a general understanding of  
21 the issues from earlier that spring.

22 Q Did you reach any preliminary conclusions

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1 about the pattern of fraudulent activity that you  
2 observed at Madison Guaranty from the work that you  
3 did in the February, March '94 period?

4 A Only in a preliminary way. My sense was  
5 that the Castle Grande transaction had serious  
6 deficiencies that, if you could nail down all the  
7 evidentiary pieces, might well demonstrate it was a  
8 fraudulent transaction.

9 There were issues of papered files and  
10 phony appraisals and deals struck and exceeding  
11 firing limits. There were a whole range of indicia  
12 that made Castle Grande look very problematic as a  
13 straight-up business transaction.

14 Q Do you recall any other transactions in  
15 particular from your work that was done in February,  
16 March '94?

17 A That's the one that comes to mind most  
18 readily.

19 Q So for example, if there had been -- strike  
20 that.

21 You gave other comments to Mr. Ericson.  
22 You have the one about maybe the report didn't focus



1 enough on the global fraud, the fact that the report  
2 was written in a way that reflected Mr. Ericson's  
3 sense of humor. Any other comments?

4 A I think I had made a comment that in  
5 analyzing the Whitewater transaction itself, the  
6 report didn't seem to account for what appeared to be  
7 a difference of equity input into the Whitewater  
8 transaction by the Clintons and by the McDougals, but  
9 yet, each were to carry the same continuing benefit  
10 or potential benefit from the transaction. That is,  
11 for example -- and I'm not sure of the numbers here,  
12 but for example, each party to the Clintons and  
13 McDougals --

14 Q I can give you the actual number from the  
15 report. On page 3 and 4 of the April 24, '95 report,  
16 it indicates that McDougals and McDougal entities  
17 advanced 158,000 to Whitewater and the Clintons  
18 advanced 135,970.

19 A I think that's the kind of issue, if one  
20 party to a transaction is putting up all the money,  
21 the other party is putting up a little or part of the  
22 money, you're splitting it 50/50, one can suggest

1 there may be something unusual about that  
2 transaction.

3 Q Did you indicate anything further to  
4 Mr. Ericson about possible lines of inquiry he might  
5 wish to pursue with regard to the fact that the  
6 McDougals and McDougal controlled entities put more  
7 into Whitewater than the Clintons did?

8 A Well, I think I suggested a couple. One,  
9 if I remember correctly, something that -- I didn't  
10 think the report really drew any inferences from this  
11 or focused on that, but sort of presented it in a way  
12 that seemed to suggest that this was a perfectly  
13 normal way to do a business transaction.

14 More significantly, which was my general  
15 third comment to him, if I remember correctly, the  
16 report was based almost entirely on document analysis  
17 and not witness interviews, and I'm quite sure I made  
18 some comment to him it seemed -- don't you have to  
19 interview some witnesses to find out what happened  
20 here, how a particular transaction was structured,  
21 what was the intent behind it, and not just do an  
22 accounting analysis of 25,000 documents?

1 If I remember correctly -- and it's been a  
2 long time since I've seen that report -- I don't  
3 believe it relied on witness accounts of various  
4 transactions, but that it relied primarily on  
5 accounting of documents. I think there was --

6 Q So for example, the report did not reflect  
7 an interview with, among other people, Jim McDougal,  
8 Chris Wade, the Clintons?

9 A I don't think -- I'm not sure, sitting here  
10 today, but my memory at the time was it didn't  
11 reflect interviews of a whole range of people who  
12 were involved in the transactions themselves, and  
13 that would be a logical thing to do, if you could, to  
14 interview witnesses to try to determine -- bring some  
15 life to the document.

16 Q So you thought it was too narrowly focused  
17 on the accounting analysis?

18 A I thought it was quite narrowly focused on  
19 the accounting analysis. It was sort of an  
20 accounting analysis of documents.

21 Q Now, with regard to the fact that the  
22 Clintons and McDougals had made disproportionate

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1 advances to Whitewater, from your experience as U.S.  
2 Attorney, did you think that perhaps some  
3 investigation should be looked into to see whether --  
4 strike the question.

5 Did you think there was a need to  
6 investigate whether perhaps these disproportionate  
7 advances were in some way a quid pro quo to Governor  
8 Clinton for favors that he might be bestowing upon  
9 Mr. McDougal?

10 A I don't know that I made that comment  
11 specifically to him, but I think it goes back to my  
12 first comment, and that is, it's hard to see this  
13 benefit or detriment of a particular party to a  
14 transaction, it's hard to see how that might come out  
15 in isolation, that if you were to plug it into  
16 related parties and transactions, the picture might  
17 look differently.

18 I wasn't suggesting to him what the  
19 conclusion would be because I didn't have a basis at  
20 that point to make that conclusion, but I was  
21 suggesting that in isolation, you might say the  
22 documents show this, but if you were able to expand

1 it and plug it into all the other related  
2 transactions, you might well find that there was some  
3 potential trade-off or benefit that would be accrued  
4 to one party or another.

5 Q Did you in any way indicate to Mr. Ericson  
6 that consideration should be given to investigating  
7 the fact that Governor Clinton might have been  
8 providing favors to Mr. McDougal in exchange for the  
9 disproportionate advances that were being made by  
10 Mr. McDougal to Whitewater?

11 A I don't remember today that level of  
12 specificity of comment.

13 Q Would that be based on your own experience  
14 as a U.S. Attorney, the kind of inquiry one would  
15 want to conduct in an investigation of civil claims?

16 A I think if you see a transaction where the  
17 parties don't contribute equal amounts but may  
18 benefit equally, it raises at least a prima facie  
19 basis of inquiry as to is there some other benefit  
20 that would accrue here or is it simply -- what is the  
21 explanation for that? It's a situation that asks for  
22 an explanation.

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1 Q Did you indicate that Mr. Ericson should at  
2 least look to the why question with regard to the  
3 disproportionate advances being made by McDougal  
4 vis-a-vis the Clintons?

5 A I can't be sure I did that sitting here  
6 today. I don't remember specifically that we got  
7 into that level of detail.

8 Q If you had been running the investigation,  
9 would that have been a line of inquiry you would have  
10 followed going forward?

11 A That's a speculative question on my part.  
12 I expressed my sense that the investigation would  
13 benefit from a look at how all the pieces would fit  
14 together.

15 Q Including any kind of relationships that  
16 the McDougals and Clintons might have?

17 A Well, it would include all those  
18 relationships of those parties as well as McDougal to  
19 other real estate transactions. There were several  
20 real estate transactions that were coming out of  
21 Madison, so I think that goes back to one of the  
22 earlier questions about check kite.

1           Why was there money flowing among, between  
2 a variety of institutions and a variety of --  
3 involving a variety of real estate transactions? So  
4 those were questions that sort of have some  
5 interlocking interest from an investigative point of  
6 view.

7       Q    Would you have wanted to look to see  
8 whether --

9       A    The bottom line is --

10      Q    Would you have wanted to look at the  
11 relationship between Jim McDougal and Governor  
12 Clinton insofar as it related to public actions of  
13 Governor Clinton and his administration vis-a-vis  
14 Madison and McDougal controlled entities?

15      A    I don't think I should speculate on the  
16 range of questions I should look at or shouldn't look  
17 at. Ultimately, this was the client who was looking  
18 for particular input, and it's only speculation on my  
19 part.

20      Q    Would that be something that you think  
21 should have been looked at?

22           MR. BEN-VENISTE: By whom?

1           THE WITNESS: There are a lot of other  
2 institutions looking at those questions, I can  
3 guess. They obviously believe it's important. I do  
4 believe it's speculation on my part beyond what I've  
5 said.

6           BY MR. COLE:

7       Q    I'm sorry, Mr. Stephens, you indicated  
8 ultimately it was the client that was looking for a  
9 particular product here. Do you know as a factual --

10      A    Yes, as a factual matter, this is no  
11 different than any other client relationship. The  
12 client wants a particular matter investigated or a  
13 particular transaction investigated. They want a  
14 particular product in the sense that "give us a  
15 report that gives us this, you don't need to do  
16 that."

17           BY MR. COLE:

18      Q    Do you know if that occurred here, the  
19 client dictated to your firm what it would or  
20 wouldn't investigate or what the scope of its  
21 investigation would be?

22      A    Well, the RTC was a pretty hands-on client.



1 Q But that's not my question. My question is  
2 did they -- do you know that they dictated to your  
3 firm that certain things should be looked at and  
4 other things shouldn't be looked at with regard to  
5 Madison?

6 A I'm not sure how to take your word  
7 "dictated." There would be times when they said  
8 call these people but don't call these people. Don't  
9 make this phone call until I call you. It was a very  
10 close, hands-on, do this but wait until we give you  
11 authority to do this.

12 So it was a closely controlled matter from  
13 what I saw. I don't want to characterize it -- it's  
14 not fair for me to characterize it one way or the  
15 other. After all, in private practice, the client is  
16 the client. And it is their responsibility and they  
17 seek outside counsel to assist them in that. They  
18 had every right to provide guidance and direction to  
19 outside counsel. You know, this is not -- and  
20 Pillsbury was not an independent public agency or an  
21 independent counsel or independent prosecutor or  
22 Congressional committee or anything else looking at

1 this. It was outside counsel retained by an agency  
2 to assist them in doing what they wanted to  
3 accomplish.

4 BY MR. GIUFFRA:

5 Q Did you have any understanding during the  
6 period that you worked on this matter that the RTC  
7 wanted -- let me ask this one last question -- that  
8 the RTC wanted -- strike that. Why don't we start  
9 over. Take your break.

10 (Recess.)

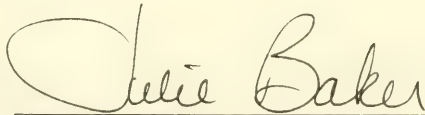
11 (Discussion off the record.)

12 (Whereupon, at 6:50 p.m., the deposition  
13 was adjourned, to reconvene at 1:00 p.m., on  
14 Thursday, May 16, 1996.)  
15  
16

-----  
17 JAY B. STEPHENS  
18  
19  
20  
21  
22

I, JULIE BAKER, the officer

before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the  
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997



**DEPOSITION OF JAY B. STEPHENS  
IN RE: S. RES. 120**

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**VOLUME II**

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**THURSDAY, MAY 16, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of JAY B. STEPHENS, called for further examination pursuant to agreement by counsel, at 1:20 p.m. in Room 534 of the Dirksen Senate Office Building, before DAVID L. HOFFMAN, Court Reporter, when were present:

ROBERT J. GIUFFRA, JR., Esq.

Majority Chief Counsel

LANCE COLE, Esq.

Minority Deputy Special Counsel

RICHARD BEN-VENISTE, Esq.

Minority Special Counsel

DAVID M. LUNA, Esq.

Minority Law Clerk

U.S. Senate

Committee on Banking, Housing, and Urban Affairs

534 Dirksen Building

Washington, DC 20510

On behalf of the Committee.

ROBERT A. GUTKIN, Esq.

Pillsbury Madison & Sutro, L.L.P.

1050 Connecticut Avenue, NW

Washington, DC 20036

On behalf of the Deponent.

JOHN DAVIDOVICH, Esq.

Federal Deposit Insurance Corporation

550 Seventeenth Street, NW

Washington, DC 20429

On behalf of the Federal Deposit Insurance Corporation.



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## 1 PROCEEDINGS

2 (1:20 p.m.)

3 Whereupon,

4 JAY B. STEPHENS

5 was recalled as a witness herein, and having been  
6 previously duly sworn, was examined and testified  
7 further as follows:

8 MR. GIUFFRA: Let's go back on the record.

9 EXAMINATION (Continued)

10 BY MR. GIUFFRA:

11 Q Mr. Stephens, you understand you're still  
12 under oath?

13 A Yes.

14 Q Since your deposition yesterday, did you  
15 speak with anyone other than your counsel?

16 A About this matter?

17 Q About this the subjects that you testified  
18 about yesterday?

19 A No, only my counsel.

20 Q When we stopped yesterday, we were  
21 discussing comments that you had given to Mr. Ericson  
22 with regard to a draft of the Whitewater preliminary

1 report.

2 Do you recall that testimony?

3 A Yes.

4 Q You indicated that you had given Mr.

5 Ericson three or four comments, and you indicated

6 that the first comment had to do with the style in

7 which the report was written. Another comment had to

8 do with whether the report did not sufficiently take

9 into account the pattern of fraud. Another comment

10 had to do with whether he had sufficiently taken into

11 account the difference of equity input into

12 Whitewater by the Clintons and McDougals.

13 Do you recall any other comment that you

14 might have given to Mr. Ericson?

15 A I think I indicated yesterday that I made

16 some comment about whether the report was based on

17 any witness interviews, and that I thought it was

18 appropriate -- well, my sense would be that it would

19 be helpful in understanding the various transactions

20 to have testimony from witnesses if they were

21 available to provide that testimony.

22 Q Do you recall any other comments you might

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1 have given to Mr. Ericson?

2 A Not at this time, no.

3 Q Did you have any subsequent conversations

4 with Mr. Ericson about this preliminary report?

5 A It's possible. I don't recall any. We

6 would talk from time to time, but I think the billing

7 records probably didn't indicate many conversations

8 with him after this report.

9 My sense is it's possible that we would

10 have had a general conversation about where things

11 are or when they were going to file the report or

12 something like that, but I don't remember any

13 specific conversations directed to this report or

14 comments on this report.

15 Q Did you receive another draft of the

16 report?

17 MR. BEN-VENISTE: I think we ought to fix

18 some point in time because none of your questions, up

19 to this point, have done that.

20 BY MR. GIUFFRA:

21 Q Did you understand my question, Mr.

22 Stephens?

1 A Did I receive another draft of that report  
2 at some time? I received a draft of some report, it  
3 must have been in December of '94.

4 Because, if I remember correctly, I must  
5 have spent two or three hours one morning or one  
6 afternoon starting to look through that report, and I  
7 didn't do anything further with regard to that.

8 I don't know whether that was a subsequent  
9 draft of this report or whether it was another report  
10 sitting here.

11 Q Or whether it was a completely different  
12 subject matter?

13 A I don't recall which it was. It was some  
14 report that probably would have been concluded in  
15 about the end of December of '94 or some draft.

16 MR. COLE: The first report that I'm aware  
17 of that your firm released completed was the  
18 Whitewater report, the preliminary Whitewater report  
19 in April of 1995, and there were no subsequent  
20 reports until there were a number at the end of '95  
21 around late December, and then the one in '96.

22 So do you believe that the subsequent

1 report you looked at was another draft of the  
2 Whitewater report, or the draft of a different  
3 report?

4 THE WITNESS: If what the facts are that  
5 you've said are true, it would be presumably the only  
6 other report that might be available would be another  
7 draft of the Whitewater report. I don't remember  
8 that at this time sitting here.

9 BY MR. GIUFFRA:

10 Q Why did you cease reviewing this draft of  
11 a report that you received in late December '94?

12 A My sense was I was not involved in the  
13 analysis of the project of the investigation. My  
14 sense was there was no basis to continue to review  
15 those reports and to bill time to the client for that  
16 purpose.

17 Q With regard to this report that you  
18 received in late December 1994, did you request a  
19 copy of the draft, or was it just sent to you without  
20 a request?

21 A I don't recall. I'd be relatively sure  
22 that I didn't request a copy but it's possible that



1 Mr. Ericson called and said he had another draft, and  
2 I said, you know, if you've got a copy, pop me a  
3 copy, I'd like to see what you've got, or something.  
4 But I don't recall the backdrop as to how or why that  
5 came to be.

6 Q Why did you have a sense that you were not  
7 involved in the analysis part of this project?

8 A As we discussed yesterday, most of my work  
9 was focused at the outset and targeted at specific  
10 projects. After August of '94, I had only sporadic  
11 involvement and the last chunk of involvement really  
12 was in November of '94, I think, when I reviewed the  
13 first report.

14 So there was nothing additional, no other  
15 assignments that were specifically requested, and I  
16 didn't reach out for assignments because there was no  
17 particular reason to do that.

18 Q Did there come a time when someone  
19 indicated to you that your services would not be  
20 required any further on this particular project for  
21 the RTC?

22 A No.

1 Q Did you ask anyone at the firm whether  
2 your services continued to be needed on the project?

3 A I think the answer to that is no. It  
4 became apparent to me some time in July-August that  
5 most of the work was going to be done on the West  
6 Coast. There was no explicit statement that we won't  
7 need you to do this or that.

8 From time to time, I would get copied on  
9 something and from time to time, in August and  
10 September, for example, I may have been asked to  
11 assist in identifying a document or forwarding a  
12 request or a subpoena or something like that.

13 Q You indicated that you relayed certain  
14 comments to Mr. Ericson with regard to the draft that  
15 you received in October 1994 of the Whitewater  
16 report.

17 Did you provide any comments to anyone  
18 else?

19 MR. GUTKIN: Of that report?

20 BY MR. GIUFFRA:

21 Q With regard to that report?

22 A I don't think so.

1 Q You didn't speak to Mr. Patterson?

2 A Not to my recollection.

3 Q You didn't speak to anyone but the client?

4 A Correct.

5 Q Did you review a copy of the report issued  
6 by Pillsbury dated April 24, 1995, entitled "Madison  
7 Guaranty Savings & Loan and Whitewater Development  
8 Company, Inc."?

9 (Handing document to witness.)

10 THE WITNESS: Is this the final report?

11 BY MR. GIUFFRA:

12 Q The final.

13 A I did not review this.

14 Q Have you ever read it?

15 A I probably have read through parts of this  
16 but I never read it in terms of analyzing the report  
17 and providing comments on it, or anything like that.  
18 I believe I was given or sent a copy after it was  
19 filed. I probably read through, skimmed through it.

20 Q Do you know whether your comments were  
21 taken into account in the drafting of the final  
22 report dated April 24, 1995?

1 MR. GUTKIN: Vague and ambiguous. You're  
2 asking about the comments on the file, whether his  
3 comments on the file were taken into account in the  
4 drafting?

5 MR. GIUFFRA: No, that wasn't the  
6 question.

7 Let me rephrase the question.

8 BY MR. GIUFFRA:

9 Q You gave comments to Mr. Ericson in  
10 October 1994 with regard to this preliminary report?

11 A I believe it was November, early November  
12 '94.

13 Q Early November '94.

14 Did you ever have any conversation with  
15 Mr. Ericson in which you asked him whether he took  
16 your comments into account in drafting the final  
17 report, which is dated April 24, 1995?

18 A Not that I recall.

19 Q Do you know whether Mr. Ericson took into  
20 account the comments that you gave to him in early  
21 November 1994 in drafting the report that was issued  
22 on April 24, 1995?

1 A I don't.

2 Q Do you know, from your own reading of this  
3 report, whether your comments were taken into account  
4 in the report that was issued April 24, 1995?

5 A I have no further recollection of that at  
6 this time, no.

7 Q Now with regard to this report, dated  
8 April 24, 1995, do you have any basis for agreeing or  
9 disagreeing with the conclusions stated in that  
10 report?

11 A No.

12 Q So it would be fair to say that this is  
13 not the Jay Stephens report, correct?

14 A That's correct. That is not a Jay  
15 Stephens report.

16 Q It does not reflect your analysis?

17 A That's correct.

18 MR. BEN-VENISTE: How do you know if you  
19 haven't read it?

20 THE WITNESS: It doesn't have my analysis  
21 in it.

22 MR. BEN-VENISTE: You did read it?

1 THE WITNESS: I didn't read it. I have  
2 skimmed through parts of it but I've never read it to  
3 analyze it.

4 BY MR. GIUFFRA:

5 Q But this is not something you've signed  
6 off on, correct, this document dated April 24, 1995?

7 A I did not write that report, I did not  
8 analyze that report, I did not review that report to  
9 determine whether or not it reflected my views. So  
10 that's not my report. It's a report of the firm.

11 Q Now there were a number of additional  
12 reports that were issued by Pillsbury. I would just  
13 very briefly like to go through them and ask you the  
14 same sorts of questions.

15 There is a supplemental report, Madison  
16 Guaranty Savings & Loan and Whitewater Development  
17 Company, Inc., dated December 13, 1995.

18 (Handing document to witness.)

19 BY MR. GIUFFRA:

20 Q Did you review any drafts of that report?

21 A Not to my knowledge, no.

22 Q Did you review the final version of this

1 report?  
2 A No.  
3 Q Did you in any way comment on this report?  
4 A No.  
5 Q Did you in any way --  
6 Strike that.  
7 Do you agree or disagree in any way with  
8 the conclusions stated in this report?  
9 A I have no basis to make that judgment.  
10 Q And this is not a Jay Stephens report,  
11 correct?  
12 A That's correct, it is not.  
13 Q Another report, it's called a Report on  
14 Certain Real Estate Loans and Investments Made by  
15 Madison Guaranty Savings & Loan and Related Entities.  
16 It is dated December 19, 1995.  
17 (Handing document to witness.)  
18 THE WITNESS: Yes?  
19 BY MR. GIUFFRA:  
20 Q Did you review a draft of that report?  
21 A Not to my knowledge.  
22 Q Did you review the final of this report?

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1 A Not to my knowledge.  
2 Q Not a Jay Stephens report?  
3 A It is not a Jay Stephens report.  
4 Q And you are in no position to say whether  
5 you agree or disagree with any of the statements or  
6 conclusions contained in this report?  
7 A That's correct.  
8 Q I show you another report. This is "A  
9 Report on the Representation of Madison Guaranty  
10 Savings & Loan by the Rose Law Firm" dated  
11 December 28, 1995.  
12 (Handing document to witness.)  
13 BY MR. GIUFFRA:  
14 Q Did you review a draft of this report?  
15 A No, I did not.  
16 Q And you're not in a position to say  
17 whether you agree or disagree with any of the  
18 statements or conclusions contained in this report  
19 concerning the Rose Law Firm?  
20 A That's correct.  
21 Q Not a Jay Stephens report?  
22 A That's correct.



1 Q Another report, "A Supplemental Report on  
2 the Representation of Madison Guaranty Savings & Loan  
3 by the Rose Law Firm" dated February 25, 1996.

4 (Handing document to witness.)

5 BY MR. GIUFFRA:

6 Q Same question. Did you review a draft of  
7 this report?

8 A No.

9 Q You're not in a position to say whether  
10 you agree or disagree with any of the statements or  
11 conclusions contained in this supplemental report  
12 concerning Rose Law Firm's representation of Madison  
13 Guaranty?

14 A That's correct.

15 Q This is not a Jay Stephens report?

16 A That's correct, it is not.

17 Q Now in your view, in order for a report on  
18 an investigation to fairly be considered a Jay  
19 Stephens report, what in your view would have to be  
20 necessary --

21 MR. GUTKIN: Vague and ambiguous.

22 BY MR. GIUFFRA:

1 Q Do you understand the question?

2 A Not really.

3 Q I'll restate the question.

4 MR. BEN-VENISTE: Can we get finished with  
5 this? This is just silly.

6 MR. GIUFFRA: You know, Richard, when you  
7 ask your questions, I'll be courteous, and I would  
8 ask you to do the same.

9 MR. BEN-VENISTE: We did that a little bit  
10 yesterday.

11 MR. GIUFFRA: I think there was a lot of  
12 useful testimony that came out yesterday.

13 MR. BEN-VENISTE: I was just waiting for  
14 an opportunity to question. These are silly  
15 questions, we're wasting time.

16 MR. GIUFFRA: Stop playing games, John.

17 I would just like to note for the record  
18 that throughout this deposition, whenever Mr. Cole,  
19 who has been representing the minority in this  
20 deposition, wished to ask a question to clarify  
21 anything, I've allowed him to go forward. I haven't  
22 said anything. The record is replete with examples

1 in which Mr. Cole put questions to Mr. Stephens.

2 BY MR. GIUFFRA:

3 Q Mr. Stephens, you heard Mr. Cole ask a  
4 number of questions?

5 A That's correct.

6 MR. COLE: I'll stipulate for the record  
7 that I asked him some questions.

8 MR. BEN-VENISTE: We're just wasting time,  
9 Bob, that's all.

10 BY MR. GIUFFRA:

11 Q In the course of your career, you've  
12 prepared a number of reports of investigations,  
13 correct?

14 A Not necessarily, several reports of  
15 investigation. I've done a multitude of  
16 investigations, not necessarily in the context of  
17 filing reports with a grand jury or with, we would do  
18 prosecution memoranda, for example. You may consider  
19 them a report. I mean, I consider them a report. It  
20 all depends on your definition.

21 Q You've written reports to clients while  
22 you've been in private practice concerning subjects

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1 that you'd examine for them, for example, legal  
2 memoranda?

3 MR. BEN-VENISTE: Would it be helpful for  
4 him to stipulate that none of these are Jay Stephens  
5 reports so we can move on?

6 MR. GIUFFRA: No.

7 THE WITNESS: I believe I have written  
8 legal memoranda to clients, yes.

9 BY MR. GIUFFRA:

10 Q Have you written any memoranda to clients  
11 setting forth the results of investigations conducted  
12 on behalf of the client?

13 MR. GUTKIN: Attorney-client?

14 MR. GIUFFRA: I'm asking him whether he's  
15 ever written a report to a client unspecified.

16 MR. GUTKIN: No, you're asking him for the  
17 character of the report which could detail  
18 communications with him. If you want to know if he's  
19 written to clients, and if he's written letters to  
20 clients, or memos to clients, you can certainly ask  
21 him that, but don't start going into investigations.

22 BY MR. GIUFFRA:

1 Q Have you written letters to clients  
2 setting for the facts of investigations for those  
3 clients?

4 MR. GUTKIN: Same objection.

5 MR. GIUFFRA: I'm not asking him to  
6 specify.

7 MR. GUTKIN: It reflects communications to  
8 the client. You're just characterizing what those  
9 communications are. I mean, I'll give you some  
10 leeway but you're asking attorney-client questions.

11 MR. GIUFFRA: I disagree strongly with  
12 that.

13 MR. GUTKIN: We have a disagreement then.

14 BY MR. GIUFFRA:

15 Q I'll try again.

16 In the course of your legal practice,  
17 you've written briefs to courts, correct?

18 A Correct.

19 Q Signed the brief, right?

20 A Correct.

21 Q You've written memos to clients on matters  
22 of interest to those clients, right?

1 A Right.

2 Q When a memo is written by you, what steps  
3 would you normally take in order to sign off on it?

4 MR. BEN-VENISTE: This is so ludicrous and  
5 beyond any possible relevance.

6 MR. GIUFFRA: Not necessarily.

7 THE WITNESS: If I were writing a  
8 memorandum to a client or writing a brief to a court,  
9 I would generally read that brief or memorandum. In  
10 many cases, I may have written all or a portion of  
11 that brief or memorandum, and I would determine  
12 whether or not it comported with my understanding of  
13 the facts and the law and the analyses of the issues  
14 that we were seeking to present either to the court  
15 or to the client.

16 BY MR. GIUFFRA:

17 Q If you were doing a factual memorandum to  
18 the client, you for example would look at interview  
19 notes and deposition transcripts to see whether the  
20 statements contained in the memorandum were accurate?

21 A I would depend on what the source of the  
22 facts were for the matter under review. If the

1 source of the facts were depositions and witness  
2 interview notes, I would most likely examine those  
3 primary source materials to determine whether or not  
4 my characterization of the facts accurately reflected  
5 those source materials.

6 Q And you did not engage in any of those  
7 steps in connection with any of these reports that  
8 you were shown here today concerning the Madison  
9 Whitewater matter?

10 A That's correct, with potentially the  
11 exception of the preliminary report in November, when  
12 I provided some general reflective comments that were  
13 reflected based on my preliminary understanding of  
14 what the project was about.

15 Q At that point, it was your understanding  
16 that you were reviewing --

17 Strike that.

18 When you were reviewing the draft  
19 preliminary report in November 1994, was it your  
20 understanding that you were going to be participating  
21 in a process whereby you would engage in a review of  
22 drafts of this report, and then participate in the

1 review of the final report?

2 A Not necessarily. That was not proffered  
3 at the time.

4 Q It was more just that Mr. Ericson wanted  
5 to get your preliminary thoughts on his draft?

6 A Correct.

7 Q Have you seen statements in the media that  
8 have described these reports issued by Pillsbury  
9 Madison & Sutro as Jay Stephens reports?

10 A I have.

11 Q What is your reaction to those statements  
12 in the media by various public officials describing  
13 these reports as Jay Stephens reports?

14 A They do not accurately reflect the stated  
15 facts.

16 Q Have you had any discussions with anyone  
17 at your firm with regard to the fact that the  
18 Pillsbury reports have been mischaracterized as Jay  
19 Stephens reports?

20 MR. GUTKIN: Other than counsel?

21 BY MR. GIUFFRA:

22 Q Other than counsel?



1 A Yes.

2 Q Could you describe for the record those  
3 discussions?

4 A On a couple of occasions, --

5 MR. BEN-VENISTE: Can we fix the time?

6 THE WITNESS: The question is can we fix  
7 the time.

8 BY MR. GIUFFRA:

9 Q Probably when the reports were issued  
10 publicly.

11 A Sometime after the public comments came  
12 out, I likely had a conversation with one or two or  
13 more of my partners in which I referenced that these  
14 were firm reports, these were not my reports.

15 I, in one case, may have inquired as to  
16 how I should deal with that issue internally in the  
17 firm.

18 Q To whom would you have spoken?

19 MR. BEN-VENISTE: Who did you speak to?  
20 Is that the question?

21 THE WITNESS: They would have been  
22 partners of mine.

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1 BY MR. GIUFFRA:

2 Q Mr. Patterson?

3 A I don't believe I spoke to Mr. Patterson.  
4 It's possible I spoke to Mr. Ericson because we  
5 probably had a conversation in which there was some  
6 humor on his part, and I indicated that, you know,  
7 this would be more accurately characterized as an  
8 Ericson report than a Stephens report, but it, at a  
9 minimum, should be the firm report and not my report.

10 Q Did you ask anyone whether a statement  
11 should be issued, either by the RTC or by the firm,  
12 stating that you had not drafted these reports?

13 A What do you mean by anyone?

14 Q Did you discuss with anyone at Pillsbury  
15 whether some sort of a statement should be made by  
16 the RTC or Pillsbury stating that you did not author  
17 these reports?

18 A I believe I may have. It's unclear  
19 whether those conversations would have been  
20 explicitly pointed like that, or what is the  
21 mechanism to try to make sure that the record is  
22 accurate.

1 Q So you were looking for a way to make sure  
2 that the record accurately reflected the fact that  
3 you did not author these reports?

4 A I thought it would be appropriate that the  
5 factual record be accurate.

6 Q Do you know whether anyone --  
7 Strike that.

8 What response did you get in response to  
9 your request that some sort of step be taken to make  
10 sure that the record was accurate with regard to who  
11 the author of these reports was?

12 A I think the general sense was two things.  
13 One, as a general matter, the client didn't want us  
14 to make any public comments, and secondly I think the  
15 general response was, let's see how this plays out.  
16 Maybe it will all go away and this will not be an  
17 issue that we need to address.

18 Q Do you know whether anyone at Pillsbury  
19 had any discussions with anyone at the RTC or the  
20 FDIC about whether a correction should be issued,  
21 indicating that you were not the author of these  
22 reports?

1 A I don't know that.

2 Q Do you know whether anyone at Pillsbury  
3 had any discussions with anyone at the RTC or FDIC  
4 with regard to the fact that there had been public  
5 comment that you were the author of these reports?

6 A Could you just repeat that?

7 MR. GIUFFRA: Read the question back.  
8 (Readback.)

9 THE WITNESS: I believe that was the  
10 question I answered. No, I'm not aware of any  
11 conversations like that with the potential exception,  
12 just to be perfectly accurate, I guess since I'm at  
13 Pillsbury, I indicated yesterday I had one call from  
14 Mr. Gabrellian very late, after all the reports were  
15 issued. He commented to me on a professional matter  
16 which I'd handled. This issue was the public press  
17 issue and the identification of the reports as Jay  
18 Stephens reports was not explicitly raised in that.  
19 But I think there was a predicate basis there that he  
20 recognized that I was put in an unfair posture.

21 BY MR. GIUFFRA:

22 Q As being the author of reports you did not

1 author?

2 A That's correct.

3 Q Did he indicate to you whether there was  
4 any consideration with in either the FDIC or the RTC  
5 about issuing a correction with regard to who the  
6 actual author of these reports was?

7 A No, I did not.

8 MR. GIUFFRA: I think I've concluded my  
9 examination.

10 (Pause.)

11 THE WITNESS: Before I begin, I think I  
12 may have one additional comment I think on the last  
13 question that was asked.

14 MR. BEN-VENISTE: Sure, go ahead.

15 THE WITNESS: It is possible, I don't  
16 remember whether it was before the reports were  
17 issued or during or after the publicity in March of  
18 '94, but at some point, I had a conversation with Mr.  
19 Patterson, and the thrust of that conversation was it  
20 is Pillsbury the firm that has been retained to do  
21 this and not Jay Stephens that has been retained to  
22 do this, and that was the general position of the

1 firm. I don't remember whether that was with  
2 reference to particular reports or with reference to  
3 the engagements or something of that nature.

4 MR. GIUFFRA: Let me follow up on that.

5 FURTHER EXAMINATION

6 BY MR. GIUFFRA:

7 Q This conversation you had with Mr.  
8 Patterson was in March of '94?

9 A I'm not sure when it was.

10 Q Was it before or after reports that were  
11 going to be issued by the Pillsbury firm?

12 A I'm not sure. I just remember vaguely  
13 some comment or discussion in response to the  
14 identity of an individual in the firm's having either  
15 been retained and that the real response is that is a  
16 firm project and not an individual's project.

17 Q Did Mr. Patterson ever indicate to you a  
18 need to issue a correction that these were not  
19 written by you but by the law firm?

20 A Not that I recall.

21 EXAMINATION (Continued)

22 BY MR. BEN-VENISTE:

1 Q In that regard, when there was the initial  
2 publicity about your involvement in the project, do  
3 you recall that this was the subject of some  
4 conversation among the partners in the firm?

5 A That's not correct.

6 Q You didn't discuss it with anybody in the  
7 firm that your name was mentioned early on in March?

8 A Discuss what?

9 Q The fact that the press had seized on the  
10 fact that you were involved and the reaction of  
11 George Stephanopoulos and others about that?

12 A I think I indicated yesterday that there  
13 may have been some general comment about my making an  
14 observation that the press had staked out our house  
15 and there was general banter back and forth, but  
16 there was no discussion about or analysis of or  
17 determination about how that was an issue that needed  
18 to be addressed.

19 Q It was quite clear from the very beginning  
20 that this was a firm project, not a Jay Stephens  
21 project?

22 A I believe that's correct.

1 MR. GIUFFRA: At least as far as the  
2 internal memo of the firm is concerned.

3 MR. BEN-VENISTE: Is that an objection?

4 If you could be quiet for a little while,  
5 let me try to ask my questions with the small amount  
6 of time I have this afternoon.

7 THE WITNESS: From the firm's perspective,  
8 it was a firm engagement. All engagements generally  
9 are firm engagements, I guess.

10 BY MR. BEN-VENISTE:

11 Q You're not the one who negotiated the  
12 engagement with the client?

13 A That's probably accurate. I indicated  
14 yesterday there were contacts. I mean the client I  
15 was working on a not a related but another matter for  
16 the same client, and I had conversations with that  
17 client contact about this, and there were some  
18 discussions among Pillsbury partners and between  
19 Pillsbury partners about this, so to the extent to  
20 which that reflects on your question, that's a  
21 predicate which would be recognized.

22 Q From the beginning was there a budget?



1 A I think Mr. Ericson's memorandum of  
2 February whatever it was, 18, that I was shown  
3 yesterday, laid out a plan I believe that indicated  
4 that he was going to prepare a preliminary budget.

5 Q Did you review the budget?

6 A I believe I did review the budget.

7 Q Did you participate in the creation of the  
8 budget?

9 A In the sense of looking at the budget and  
10 commenting on how much should be allocated to what  
11 task.

12 If I remember correctly, Mr. Ericson  
13 forwarded a draft of that to me, and we would have  
14 had some discussion about the case and the budget.

15 Q Did that result in modifying the budget  
16 that was presented to the client?

17 A I can't say for sure, sitting here today.

18 Q What was that budget, how much was it?

19 A I don't recall.

20 Q Roughly?

21 A I really don't recall.

22 Q No idea?

1 A I don't. I think the budget was modified  
2 as the engagement went along.

3 Q What do you recall the steps were that the  
4 budget went up or decreased?

5 A Well my memory was that, at the outset of  
6 the engagement, it wasn't clear how broad the scope  
7 of the engagement would be, and as a consequence, it  
8 was difficult to determine the extent to which the  
9 function of the budget.

10 As the engagement proceeded, the budget  
11 functions would have come into greater focus. So my  
12 sense is the amount of the budget probably increased,  
13 but Mr. Ericson was the billing partner and had  
14 primary responsibilities for focusing on budget  
15 issues.

16 Q As the billing partner, it was his  
17 responsibility to deal with the client on budget  
18 matters?

19 A As a general rule, yes.

20 Q Do you recall, you personally, dealing  
21 with the client on budget matters?

22 A I don't think so. There may have been

1 occasional questions that came up about it, but I  
2 believe Mr. Ericson took the primary responsibility  
3 for it.

4 Q You don't remember whether it was one  
5 million, two million, or three million dollars that  
6 was the starting point from which things evolved  
7 later?

8 A My sense was it was much closer to the one  
9 than to the other two figures that you've identified.

10 Q Would that make sense to you, or did you  
11 suggest that it should be more?

12 A I don't recall what my observations were  
13 at this point.

14 Q Do you have a recollection of you  
15 suggesting that the budgets be increased beyond that  
16 which was presented?

17 A I don't.

18 Q How about the hourly rate of the attorneys  
19 who were to work on the matter? Was there a  
20 negotiation of hourly rate?

21 A If I remember correctly, there was a  
22 standard RTC blended rate that was used on projects

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1 that our firm had been engaged in for the RTC. I  
2 believe that rate schedule was the one that was  
3 expected to be in effect for this project.

4 Q A blended rate?

5 A Of associates and partners.

6 Q What was that rate?

7 A I'm not sure.

8 Q According to the billing records, at least  
9 at some point you were billed at \$200 an hour at the  
10 inception.

11 A I believe that probably was the RTC, if I  
12 remember correctly, another RTC project. That was  
13 one of the rates that they used at that point in  
14 time. I don't know what the rates are.

15 Q Would you describe what you mean by a  
16 blended rate?

17 A I believe I indicated my sense is a  
18 blended rate is a rate between associates and  
19 partners.

20 Q So that everybody would be billed at the  
21 same hourly rate or all partners would be billed at  
22 one rate and all associates at another rate?

1 A I think associates and partners would be  
2 billed at similar rates, but it may be that the  
3 blended rate was not in effect here. I don't recall  
4 what the billing arrangement was for this  
5 specifically.

6 Q That isn't something you negotiated, I  
7 take it?

8 A That's correct, it was not.

9 Q It appears from our records that there are  
10 rates of \$185 an hour, \$200 an hour, \$75 an hour, at  
11 least in the first bill. What does that tell you?

12 A It doesn't tell me anything without  
13 looking at the bill.

14 Q Who is D.E. Sherson, S-H-E-R-S-O-N?

15 A A partner.

16 Q Who is K.B. Goss?

17 A He was an associate in Los Angeles.

18 Q Who is J.C. Garrett?

19 A He was a partner in Orange County.

20 Q Do you know how many lawyers were assigned  
21 to work on this project at the beginning from  
22 Pillsbury?

1 A I don't know exactly.

2 I know, in addition to Mr. Patterson, Mr.  
3 Ericson and myself, Mr. Garrett participated early  
4 on. There were a couple associates out of Los  
5 Angeles and a couple out of San Francisco and I think  
6 one out of Washington.

7 Q Who was the one in Washington?

8 A I'd have to look at the billing records to  
9 determine.

10 Q You don't remember?

11 A I don't recall.

12 Q Were you responsible for determining which  
13 lawyers would work on this project?

14 A No, I was not.

15 Q Do you know how many different lawyers at  
16 Pillsbury Madison & Sutro worked on this matter?

17 A I don't sitting here.

18 Q Do you have an approximation?

19 A Worked on it at any time?

20 Q Yes, at any time?

21 A On a regular basis?

22 Q At any time?

1 MR. GUTKIN: Over the course of the entire

2 engagement or on an average per month?

3 BY MR. BEN-VENISTE:

4 Q Over the course of the engagement, how  
5 many different lawyers?

6 A There may have been a dozen different  
7 lawyers who worked on this.

8 Q Could there be as many as 30?

9 A I don't know. I haven't looked. I'd have  
10 to check the billing records to determine how many.

11 Q As you sit here now, do you have an idea?

12 A I don't, other than my sense was there was  
13 probably a dozen or so.

14 Q So if there were as many as 30, that would  
15 be a surprise to you?

16 A Well, it wouldn't necessarily be a  
17 surprise. It's just that I don't know.

18 Q Let's go back to the level of your  
19 experience in these matters because I don't believe  
20 that was covered yesterday.

21 MR. GIUFFRA: Do you have a resume, or did  
22 we ask for that?

1 THE WITNESS: We'll provide one to you.

2 BY MR. BEN-VENISTE:

3 Q Let's start with your law school  
4 graduation. When was that?

5 A 1973.

6 Q Let's run through quickly.  
7 1973, I remember that sometime shortly  
8 after that law school graduation, you appeared on K  
9 Street. Why don't you give us your work history  
10 since then.

11 A You're sure you don't want the resume?

12 MR. GIUFFRA: Why don't you just get the  
13 resume on behalf of the other two witnesses from  
14 Pillsbury.

15 THE WITNESS: I worked initially out of  
16 law school at the law firm of Wilmer, Cutler &  
17 Pickering for approximately a year and a half.

18 Subsequently, I was appointed Assistant  
19 Special Prosecutor for the Watergate Special  
20 Prosecution Force.

21 BY MR. BEN-VENISTE:

22 Q How long were you there?



1 A I think that engagement was probably about  
2 a year, perhaps a little more than a year.

3 Q When did you leave?

4 A The fall, the late fall of '75 I believe  
5 it was.

6 Subsequently, I served as an associate  
7 general counsel of the Overseas Private Investment  
8 Corporation.

9 Subsequent to that, I served as an  
10 assistant United States attorney for the District of  
11 Columbia for approximately five years.

12 Q What years were those?

13 A 1977 to 1981.

14 Q And at that time, did you prosecute any  
15 bank fraud cases?

16 A No. Probably the answer is no. I had  
17 some fraud matters but if I remember correctly,  
18 probably never bank fraud.

19 Q Did you work with forensic accountants in  
20 any of your prosecutions as an assistant U.S.  
21 attorney?

22 A Yes.

1 Q In what case?

2 A There were cases involving fraud cases. I  
3 don't remember at this point in time

4 Q Prosecuted in Superior Court or Federal  
5 District Court?

6 A Usually Superior Court.

7 Q When you say forensic accountants, what  
8 kind of cases were you talking about?

9 A Check kites, little fraud cases.

10 Q When you say little fraud, what do you  
11 mean?

12 A Twenty, 40, 60, 80,000 dollars.

13 Q There, there was an agent who tracked the  
14 flow of money and made a chart and you used it in  
15 summing up, I guess, is that fair to say?

16 A I'm not sure I'd characterize it like  
17 that.

18 Q I don't want to put words in your mouth.  
19 Why don't you tell us your experience with fraud  
20 cases and forensic accounting and the prosecution of  
21 those fraud cases in Superior Court?

22 A I just indicated what they were.

1 Q What was the function of the forensic  
2 accountants in those cases?

3 A To track financial flows, to analyze  
4 checks, to essentially do an accounting of money  
5 flows.

6 Q When is the first civil FDIC case that you  
7 were involved with, or RTC?

8 A As I indicated yesterday, I don't believe  
9 we prosecuted any FDIC/RTC cases when I served either  
10 as an assistant or as United States Attorney. Nor do  
11 I believe was I involved in any FDIC prosecutions  
12 while I served at the Justice Department.

13 So the first civil, I believe the first  
14 civil one would be January 1994.

15 Q 19?

16 A '94.

17 Q So I interrupted you in your chronology of  
18 work assignments. You were at the U.S. Attorney's  
19 Office as an assistant. You were U.S. Attorney for  
20 five years.

21 Then what happened?

22 A Then I served as counsel to the Assistant

1 Attorney General for the Criminal Division for  
2 approximately three years, two and a half years,  
3 three years.

4 Q Where does that take us to?

5 A 1983 or thereabouts.

6 Q And thereafter?

7 A I served as Deputy Associate Attorney  
8 General of the United States at the Justice  
9 Department. Then as Associate Deputy Attorney  
10 General of the United States at the Justice  
11 Department. So that period of time at Justice was  
12 approximately '81 to '86.

13 Q Thereafter?

14 A Subsequent to that, I served as Deputy  
15 Counsel to the President from 1986 until 1988.

16 Q That was President?

17 A Reagan.

18 Subsequent to that, I served as United  
19 States Attorney from March '88 until April of 1993.

20 Q And the latter two positions you would  
21 regard as political appointments?

22 A I would not necessarily regard the

1 appointment of United States Attorney as a political  
2 appointment, as a Presidential appointment. It was a  
3 Presidential appointment, as was the deputy counsel.

4 Q It's not a civil service?

5 A It's not a civil service appointment,  
6 right.

7 Q And after your service as United States  
8 Attorney, that service terminated when?

9 A The spring of '93.

10 Q What month did you leave that office?

11 A I think it was April.

12 Q What did you do thereafter?

13 A I took some time off to travel. I wrote,  
14 spent some time with my family, and then in the sort  
15 of late summer or the fall, I was looking at  
16 potential law firm opportunities. I may have done a  
17 couple of interviews before that period of time. And  
18 the joined the law firm in December I suppose.

19 Q December of 1993?

20 A Right.

21 Q So you had been at the firm of Pillsbury,  
22 Madison and Sutro for a couple of months prior to the

1 time that you began work on the RTC matter involving  
2 Madison?

3 A Correct.

4 Q Now you were saying that the first time  
5 that you had any experience in an RTC or FDIC matter  
6 was in January of '94?

7 A In a civil RTC/FDIC matter, yes.

8 Q What was that matter?

9 MR. GIUFFRA: We covered this yesterday.

10 THE WITNESS: It was the matter of the  
11 trust bank matter, I think it was RTC v. Walde.

12 BY MR. BEN-VENISTE:

13 Q How long did that last?

14 A From January until about May 1st, maybe  
15 some time in mid-May.

16 Q What was the result in that case?

17 A A summary judgment motion was issued  
18 denying the cause of action based on the statute of  
19 limitations had run out.

20 Q So that was a relatively short engagement  
21 and one which did not result in the recovery of any  
22 funds?

1 A That's correct. Relatively short, maybe  
2 relative to me. I think the RTC had been engaged in  
3 an investigation of that matter for a couple of years  
4 prior to it coming to the firm to me to handle in  
5 January.

6 Q Then the second matter that you handled  
7 was this assignment relating to the Madison Guaranty?

8 A That's correct.

9 Q It's fair to say, then, that you'd not  
10 tried any case up to that point?

11 A FDIC case?

12 Q Yes.

13 A That's correct.

14 MR. GIUFFRA: You've tried a number of  
15 cases --

16 MR. BEN-VENISTE: Please don't interrupt  
17 me.

18 MR. GIUFFRA: Mr. Ben-Veniste, we've been  
19 having questions. Mr. Cole was here yesterday --

20 MR. BEN-VENISTE: I understand. I would  
21 ask you the favor of letting me conclude here because  
22 of the limited amount of time. Obviously you've got

1 a lot of time on your hands.

2 MR. GIUFFRA: Richard, I'm asking the  
3 question --

4 MR. BEN-VENISTE: Stop it. We're going to  
5 take an adjournment here, if you can't stop  
6 interrupting me. Calm yourself. Just make a note  
7 and ask the questions later.

8 MR. GIUFFRA: Minority has repeatedly  
9 objected to having two counsel.

10 MR. BEN-VENISTE: You continue to waste  
11 time. It'll come out of some other place.

12 BY MR. BEN-VENISTE:

13 Q When did you first meet Mr. Patterson?

14 A It probably was in the Spring of '93.

15 Q How about Mr. Ericson?

16 A I think I first talked to Mr. Ericson in  
17 December of '93.

18 Q Prior to working with them in connection  
19 with the RTC matter, let's refer to this matter as  
20 the RTC matter, had you worked with either of them  
21 before on any case?

22 A No.



- 1 Wait. Prior to working with them on this,  
2 on the Madison case?
- 3 Q Yes.
- 4 A Yes, I'd worked with Mr. Ericson.
- 5 Q On this case?
- 6 A On the Walde case. He was also the  
7 billing partner on that case. And he was involved in  
8 that case to some extent, so we would consult and he  
9 would review pleadings and was involved in that case,  
10 yes.
- 11 Q So you got to have a working relationship  
12 with Mr. Ericson?
- 13 A That's correct.
- 14 Q Do you regard Mr. Ericson as an  
15 experienced practitioner?
- 16 A Yes, sir.
- 17 Q What was the level of his expertise or the  
18 area of his expertise?
- 19 A He is a litigator. And he'd done some  
20 banking litigation.
- 21 Q How old is Mr. Ericson?
- 22 A He's probably in his mid-forties.

- 1 Q You had not worked with Mr. Patterson  
2 before but I take it you knew him, you knew his  
3 reputation?
- 4 A I had not worked with Mr. Patterson  
5 before. Mr. Patterson was, I believe, head of the  
6 litigation department for Pillsbury.
- 7 Q For the entire firm?
- 8 A Yes. At least he was head of one of the  
9 litigation groups, and I believe he may or may not  
10 have been head of the litigation department for the  
11 firm. I'm not positive.
- 12 Q How old a man is Mr. Patterson?
- 13 A Early fifties.
- 14 Q What is Mr. Patterson's area of expertise?
- 15 A He's a litigator.
- 16 Q Within that broad genre practitioner,  
17 where would you say his experience was?
- 18 A I think his experience probably is broadly  
19 as a litigator.
- 20 Q Civil litigation?
- 21 A Yes.
- 22 Q And banking?

1 A I don't know that was his specific area of  
2 expertise. I think he had done prior banking  
3 litigation for the RTC, but I believe his expertise  
4 was probably broader than that.

5 Q In addition to the Walde matter, had the  
6 firm been involved in representing the RTC in matters  
7 prior to your arrival?

8 A Yes.

9 Q Can you say how many different matters the  
10 firm had handled for the RTC?

11 A I'm not sure but I believe at least two  
12 matters. There's a matter in Arizona and there's a  
13 matter in California.

14 Q Were those matters substantial matters or  
15 small matters?

16 A Yes, substantial matters.

17 Q Involving substantial staffing by the  
18 firm?

19 A I believe so.

20 Q Did they go on over a period of years as  
21 opposed to months?

22 A I believe so. Much of those engagements

1 probably occurred before I came to the firm, although  
2 I believe one of them continued on through the spring  
3 of '94.

4 Q Do you know whether Mr. Ericson was  
5 involved in any of those matters?

6 A I believe he was.

7 Q How about Mr. Patterson?

8 A I believe he was.

9 Q Now at the time that you joined the  
10 office, you joined to be resident in the Washington,  
11 D.C. office of Pillsbury, Madison & Sutro, is that  
12 correct?

13 A Correct.

14 Q How many lawyers were in that office at  
15 the time that you joined at the end of '93, beginning  
16 of '94?

17 A Approximately 25.

18 Q How many were litigators?

19 (Pause.)

20 A I would think approximately ten.

21 Q What associates were assigned from the  
22 beginning to this case from the D.C. office?

1           A    I'd have to check the billing records to  
2 know whether any specific associates were assigned.

3           Q    Do you remember dealing with any on this  
4 matter?

5           A    I remember dealing with at least one, and  
6 I'm trying to think of the names of the others.

7                If I saw the billing records, I might  
8 recognize the names.

9           Q    Who do you recall dealing with on this  
10 matter?

11          A    You have the billing records handy? I  
12 could take a look.

13          Q    I'd like to see if you could recall just  
14 off the top of your head.

15               (Pause.)

16          A    I'm just trying to remember the names. I  
17 know I spoke with one individual who assisted in part  
18 of the quick turnaround on the 6(e) petition. Todd  
19 Miller I believe it was.

20          Q    Miller?

21          A    I don't know if Mr. Conley was involved in  
22 this project early on or not.

1               (Handing document to witness.)

2           BY MR. BEN-VENISTE:

3           Q    Let me show you a copy of the February  
4 billing records.

5               (Pause.)

6           A    I think from this list, although it's  
7 difficult, I think Mr. Miller is Washington. Some of  
8 the names are punched out by the hole. Mr. Gillespie  
9 was Washington.

10          Q    A paralegal or a lawyer?

11          A    A paralegal.

12               Mr. Shearson was a paralegal.

13               Those were the Washington people assigned,  
14 not necessarily assigned but who assisted.

15          Q    Now were there associates who came to  
16 Washington from other offices of Pillsbury to work on  
17 this matter?

18          A    Yes.

19          Q    From what offices?

20          A    Mr. Kolto came out relatively early  
21 because he assisted initially on the 6(e) grand jury  
22 petition. I believe he was from San Francisco.

1 Mr. Finnegan and Mr. Goss came out from  
2 Los Angeles some time in the spring of '94. I think  
3 those were the principal people that came from other  
4 offices to work out of the Washington office.

5 Q To Washington?

6 A Yes.

7 Q Did they stay for extended periods of  
8 time?

9 A In some cases, yes.

10 Q How did that work in terms of the expense  
11 of their staying in hotels or other facilities in  
12 Washington?

13 A You'll have to ask Mr. Ericson that. He  
14 handled all of the billing arrangements.

15 Q You wouldn't know?

16 A Not specifically.

17 Q You don't know whether the client  
18 underwrote the expense of the attorneys coming from  
19 California to work in Washington?

20 A I don't recall.

21 Q Did those three associates continue on  
22 with the representation throughout the course of

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1 their representation?

2 A I believe so. I'm quite sure Mr. Finnegan  
3 and Mr. Goss did. I'm not as certain how long Mr.  
4 Kolto stayed involved.

5 Q Were those associates who worked regularly  
6 with Mr. Ericson and/or Mr. Patterson?

7 A That's correct.

8 Q Basically, they're a team?

9 A I'm not sure I understand your question.

10 Q They're a litigation team.

11 A Did they work, oh, no, I would say they  
12 were two out of the Los Angeles office. I don't know  
13 whether they worked on a regular basis with Mr.  
14 Patterson. They generally might work with a whole  
15 range of partners in Los Angeles. Mr. Kolto, I don't  
16 know that he necessarily worked with Mr. Ericson  
17 before or whether a general solicitation was done to  
18 find out whether there was an associate available who  
19 might have a strong experience level who'd be able to  
20 spend some time on the East Coast.

21 Q The idea was to pick associates, if the  
22 firm could, who had some grounding in FDIC or banking



1 matters as litigators to assist in this matter rather  
2 than train associates who had not before had any  
3 experience?

4 A I think the idea was to pick associates  
5 who had skill levels who would be available, not  
6 necessarily that they had FDIC training. I don't  
7 know specifically whether any of those individuals  
8 had FDIC or banking background. They may have. But  
9 the idea was to find talented associates who would be  
10 general litigators to examine documents and begin to  
11 put together the documents with theories of  
12 liability.

13 Q And those were the three who were  
14 selected.

15 Did you participate in that selection  
16 process?

17 A The issues were discussed as to who would  
18 be available and who might have a requisite level of  
19 experience. We needed somebody with five years or  
20 two years who could be available on short notice.

21 I'm sure I participated in some phone  
22 calls regarding that.

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1 Q And you being new to the firm, would not  
2 be expected to know the personal characteristics of  
3 these individuals, not having worked with them  
4 before?

5 A I might be expected to know that, but I  
6 didn't necessarily know them.

7 Q Is it fair to say that after March of  
8 1994, your involvement in the hands-on handling of  
9 this matter was minimal from your point of view?

10 A Relatively minimal, yes.

11 Q Can you say?

12 A I would say certainly after July, but  
13 really April, May, June, it was relatively minimal.

14 Q And after that, you would say minimal?

15 A Yes, sir.

16 Q With respect to Mr. Patterson and Mr.  
17 Ericson, do you regard each of these men as being  
18 honorable and capable attorneys?

19 A Both of them are talented lawyers, very  
20 fine litigators.

21 Q Do you have any question whatsoever about  
22 their honesty and integrity?

1 A No.

2 Q Do you have any question about their high  
3 level of professional standing and professional  
4 capability?

5 A No.

6 Q Do you have any reason to believe that  
7 either of these men would compromise their  
8 professional standing to seek political favor?

9 A No.

10 Q Do you believe that that happened here?

11 A I have no basis to comment on that. I  
12 have no basis to think that happened here.

13 (Pause.)

14 Q At the time that you were assigned to this  
15 project, you realized that given your public  
16 positions that you had held in the past, and the  
17 nature of your service in some regard in highly  
18 publicized matters, that your involvement in this  
19 project might occasion some public comment?

20 A What's the question?

21 MR. BEN-VENISTE: Read it back.

22 (Readback.)

1 MR. GUTKIN: Vague and ambiguous.

2 MR. BEN-VENISTE: Let me rephrase it then.

3 BY MR. BEN-VENISTE:

4 Q Did you feel on the basis of your prior  
5 service in the Government that your involvement in  
6 this project might occasion public comment?

7 A Public comment from whom?

8 Q From the public?

9 A Not necessarily. I'm not sure I  
10 understand your question.

11 Q Well you had engaged in some partisan  
12 politicking, had you not?

13 A What partisan politicking?

14 Q You had a known affiliation with a  
15 political party.

16 A I probably had. I had served in two  
17 Republican administrations.

18 Q Was there not some comment about your  
19 leaving the U.S. Attorneys position?

20 A Comment by?

21 Q By you?

22 A I made a comment in two respects. One, I

1 indicated that I thought it was unusual and perhaps  
2 unwise to remove all United States Attorneys across  
3 the United States simultaneously without having  
4 replacements in place. That was both unusual and  
5 would be in a better interest of having continuity  
6 investigation to do it in a seriatim basis as places  
7 become available.

8 Q Did you criticize the President?

9 A I think if you look at my comments, they  
10 were not directed at the President.

11 Q Who removed you?

12 A I presume the President acting through the  
13 Department of Justice, through the Attorney General.

14 Q What was the second comment?

15 A I'm not sure. What was your question?

16 Q You indicated, in response to my question  
17 about public comments associated with your leaving  
18 the U.S. Attorneys' position?

19 A I think it was related to that, and that  
20 comment was a general comment that a particular  
21 investigation that was ongoing involving Mr.  
22 Rostenkowski, that I expressed trust that that

1 investigation would be permitted to continue by the  
2 career prosecutors who had been assigned to that  
3 prosecution by me. And it did and it went to  
4 fruition and Mr. Rostenkowski was convicted.

5 Q So there was some public reporting of  
6 those statements that might fairly be characterized  
7 as being a partisan issue or critical --

8 MR. GIUFFRA: Objection.

9 THE WITNESS: I don't see those as  
10 partisan statements at all, I really don't. They are  
11 statements of concern for the integrity of the  
12 investigating process.

13 BY MR. BEN-VENISTE:

14 Q That was my question, whether you saw them  
15 as being political?

16 A I didn't.

17 Q Were there reports of you considering  
18 running for public office?

19 A Yes.

20 Q Did you entertain the possibility of  
21 running for public office?

22 A Yes.

1 Q To what office did you aspire?

2 A I didn't necessarily aspire to any office.

3 I was asked by some people, and I gave some  
4 consideration to the United States Senate position  
5 from Virginia. And after looking at that and  
6 thinking about it, I determined that with a young  
7 family and having spent a lot of time in public  
8 service, that I wanted to go to private practice, to  
9 the private sector.

10 Q Were the people that you discussed this  
11 matter with that you've just alluded to Republican  
12 people or Democratic people?

13 A I presume this would have been for  
14 Republican nomination for the United States Senate,  
15 for the probably local Republican identified people.

16 Q Have you been active in Republican party  
17 politics?

18 A In what period of time?

19 Q Since your leaving the U.S. Attorney's  
20 office?

21 A As I indicated, I considered whether or  
22 not I wanted to pursue that potential nomination for

1 the Senate. I decided not to do that. Subsequent to  
2 coming to Pillsbury, I was not active for a period of  
3 time, although I think I served on one county  
4 committee.

5 Q A Republican county committee?

6 A County committee. I did not take an  
7 active role subsequent in the last, subsequent to say  
8 '95 and early '96, I have been involved in the sense  
9 of local political activity.

10 Q You mean Republican?

11 A Republican county committee.

12 Q In Virginia?

13 A In Virginia.

14 Q And so --

15 MR. GIUFFRA: Is this activity after you  
16 were working on this matter?

17 THE WITNESS: During my participation on  
18 this matter, my memory is I did not get involved in  
19 any campaigns or do any work on behalf of candidates  
20 or anything like that.

21 BY MR. BEN-VENISTE:

22 Q You mentioned one of the principal things



1 that you worked on by way of assignments was the 6(e)  
2 petition.

3 Why don't you describe what was involved?

4 MR. GIUFFRA: He did this yesterday.

5 THE WITNESS: If I remember correctly, one  
6 of the issues was the RTC needed access to certain  
7 records, particularly Madison Bank records, but also  
8 records of a number of potential witnesses.

9 At the time our firm was retained, many of  
10 those records had been obtained and were in the  
11 custody of the Special Counsel, FBI, either having  
12 been subpoenaed or requested as part and parcel of  
13 witness interviews.

14 As a consequence, there was an issue,  
15 could the RTC get access to these records.

16 There had been a discussion and some  
17 correspondence between Ellen Kulka and Robert Fisk  
18 who was serving as Special Counsel, whereby Ms. Kulka  
19 was seeking to obtain access, that if it had not been  
20 successful at that point in time, one of the first  
21 assignments for us was to determine whether or not,  
22 under Rule 6(e) under the Federal Rules of Criminal

1 Procedure, whether there was a basis to obtain copies  
2 of or access to those records, either on a joint  
3 basis or on an access basis, or to get possession of  
4 some of those records.

5 The thrust of that assignment was to  
6 develop the legal arguments that would give the RTC  
7 access to those records.

8 Q Did you provide memoranda to the RTC on  
9 that issue?

10 A Yes.

11 Q Did you file a petition in court?

12 A Yes.

13 Q Where was that filed?

14 A In Little Rock.

15 Q When was it filed?

16 A Some time in the spring of '94, probably  
17 in May or June.

18 Q Did you argue that petition?

19 A I did not.

20 Q Who argued it?

21 A I believe it was ultimately not argued  
22 because a resolution was worked out with the

1 Independent Counsel for a consent order to be entered  
2 by the court.

3 Q Did you participate in those discussions  
4 that resulted in the consent order?

5 A I did not really, not with the Independent  
6 Counsel, not with the Special Counsel.

7 Q Is there some reason why you did not?

8 A Those were handled by Mr. Patterson.

9 Q Did you and Mr. Patterson discuss who  
10 would handle it?

11 A Not explicitly. I was working on the  
12 petition. Mr. Ericson assisted on the petition. In  
13 terms of drafting the briefs, I believe Mr.  
14 Patterson, probably in consultation with the client,  
15 determined that he would serve as interface with the  
16 Independent Counsel.

17 Q Was that okay with you?

18 A That was Mr. Patterson's choice to staff  
19 the engagement as he saw fit.

20 Q Did you complain about it?

21 A I think I probably did not say anything to  
22 Mr. Patterson about it.

1 Q Was there a satisfactory order worked out  
2 which provided access to the documents by the RTC?

3 A The answer to that is yes. I think it was  
4 in June or thereafter, late June. Satisfactory in  
5 the sense of access was obtained. The question was  
6 should it have been. It would have been beneficial  
7 to have that access earlier.

8 Q Was there other material sought pursuant  
9 to the 6(e) petition beyond those records?

10 A There was a subsequent effort to obtain  
11 additional records. That is more witnesses were  
12 identified and more documents were identified as  
13 having come from those witnesses, so there was a  
14 supplemental effort to obtain additional records.

15 Q Were you involved in that?

16 A Only tangentially. Mr. Goss from Los  
17 Angeles I think working with Mr. Patterson took the  
18 primary responsibility in that. Mr. Goss I believe  
19 sent a copy of his draft petition to me to review.

20 Q Did you review it?

21 A I did.

22 Q Did you make changes?

1 A I had some comments.

2 Q Was this controversial?

3 A No.

4 MR. GIUFFRA: Can we take a little break?

5 MR. BEN-VENISTE: Sure.

6 (Recess.)

7 BY MR. BEN-VENISTE:

8 Q Were you involved in the production of RTC  
9 records to Congress or any issues associated with  
10 that?

11 A No.

12 Q So really the 6(e) material then in the  
13 second memo that was written about that, the second  
14 issue that came up was handled by Mr. Goss out of Los  
15 Angeles?

16 A I believe it was the second sort of wave  
17 of that. There may have been two or three efforts to  
18 obtain access to records. In other words, the  
19 initial one, and it subsequently depended on  
20 additional witnesses that were identified or  
21 additional records that were identified that the RTC  
22 determined it wanted access to.

1 Q To the best of your knowledge, any  
2 materials that you did not obtain, your firm did not  
3 obtain on behalf of your client, the RTC, was because  
4 the Independent Counsel's Office refused to agree to  
5 turn them over and the judge countermanded that  
6 position?

7 A As to those materials sought through 6(e),  
8 right.

9 Your question seemed to suggest that there  
10 were a range of records the RTC may have sought other  
11 than those under the control of the FBI or Special  
12 Counsel.

13 Q The Special Counsel was controlling the  
14 FBI in terms of any requests for production. Isn't  
15 that so?

16 A Correct. I was confused by your question,  
17 the question to the extent that it said the 6(e)  
18 petitions sought access to records under the control  
19 of the Special Counsel. To that extent, those  
20 matters were ultimately I believe resolved.

21 I was not involved in the ultimate  
22 resolution to know whether or not the extent to which

1 access was obtained to all records that were sought.

2 Q What I'm saying is, is it fair to say that  
3 any records that were sought but not obtained  
4 pursuant to this 6(e) petition were the result of the  
5 Independent Counsel objecting to the production and  
6 no court ordering them to produce them?

7 A I don't know the answer to that. I don't  
8 know whether there were any documents that were  
9 produced. I don't know the answer to that.

10 Q Let me phrase it a different way.  
11 Do you know of any documents that were  
12 sought that were not produced?

13 A I don't know.

14 Q If there were any, would it be the result  
15 of the Independent Counsel objecting to production as  
16 opposed to some other reason as to why they would not  
17 be provided?

18 A I really can't answer that either because  
19 I don't know how the outcome of all these petitions  
20 were finally negotiated.

21 Q What other basis could there be for not  
22 producing or not being supplied records that were

1 sought that were in the possession of the Independent  
2 Counsel other than the fact that the Independent  
3 Counsel didn't want to provide them?

4 A I'm not sure. If you want to argue about  
5 the issue, fine.

6 Q I don't want to argue about the issue, but  
7 I thought it was pretty straight ahead. If there  
8 were documents that the RTC was seeking, and that  
9 Pillsbury was trying to get on behalf of the RTC that  
10 were in the possession of the Independent Counsel's  
11 office, could there be any other reason, as far as  
12 your knowledge and experience, other than that  
13 Independent Counsel didn't want to turn them over?

14 A I suppose it could be that the RTC didn't  
15 actually go obtain those records, or didn't actually  
16 in fact seek access to those records.

17 Q That was part of the premise of the  
18 question was that any records that they sought access  
19 to in the possession of Independent Counsel.

20 A If you phrase the question so that there's  
21 only two options, then if it wasn't one option, it  
22 had to be the other option. And it wasn't that



1 option, it had to be the other option, and I don't  
2 know which option.

3 Q If they sought it and Independent Counsel  
4 had it, then the only reason why it wouldn't be  
5 turned over is because the Independent Counsel  
6 objected.

7 A Or unless the court didn't include it in  
8 its order, or for some reason or another, it wasn't  
9 included in the petition.

10 Q I guess you hadn't listened to the  
11 question. That included that. I'll break it down  
12 again for you.

13 There are records being sought from the  
14 Independent Counsel. Is there any basis under which  
15 the records wouldn't be turned over other than if the  
16 Independent Counsel didn't have them or if they did  
17 have them, wouldn't give them up?

18 A I guess it would be that the court didn't  
19 order access to those particular records. I don't  
20 know if that's the case.

21 Q Do you know of any circumstance where the  
22 parties agreed that records could be turned over

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1 pursuant to 6(e), but the court would not, on its  
2 own, include those records in their order?

3 A In this case? No, I don't know.

4 Q Okay.

5 Did you review the Campobello matter. You  
6 mentioned it yesterday.

7 A Early on, there were summary memos I think  
8 of a series of the various real estate transactions.  
9 I believe there was a memorandum on the Campobello.  
10 I believe I reviewed that memorandum or saw that  
11 memorandum.

12 Q And was that one of the matters that you  
13 were suggesting should be among those looked at in  
14 terms of getting the whole picture of potential  
15 Madison liability?

16 A Suggesting what?

17 MR. GIUFFRA: Can I have the question read  
18 back?

19 (Readback.)

20 THE WITNESS: I think Campobello was a  
21 matter that was surfaced early on as one of the  
22 transactions Madison was involved in. And there was

1 determination made that someone should examine that  
2 transaction to determine whether or not there was any  
3 liability there to Madison.

4 BY MR. BEN-VENISTE:

5 Q You were yesterday, I thought, stating  
6 that all these Madison transactions should be looked  
7 at, not simply each one looked at in isolation but  
8 rather all of them looked at together, in order to  
9 get a broad picture of Madison liability.

10 Isn't that so?

11 A I didn't say that in a general way. I  
12 think I made that comment yesterday with regard to a  
13 comment I made to Mr. Ericson about a draft report.

14 If that's your question, my response  
15 yesterday was there were a series of real estate  
16 transactions that Madison had financed. I believe  
17 Campobello was one of those, and that it would be  
18 helpful to look at whether or not there was any  
19 interlocking relationships, both personal and  
20 financial, and Campobello probably was one of those  
21 several real estate transactions.

22 Q So the predicate of the interlocking

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1 relationships personal and Campobello, were all of  
2 these deals that had at their hub loans from Madison?

3 A I believe that's correct.

4 Q Campobello was one of them that you used  
5 as an example in your testimony yesterday?

6 A Well, I didn't use any examples yesterday,  
7 or maybe I did. You're correct. I think I did use  
8 Campobello or at least I identified several  
9 transactions. I don't know whether it was in  
10 relationship to that comment or whether it was in  
11 relationship to a discussion about several  
12 transactions that the RTC suggested at the outset we  
13 may want to take a look at.

14 Q Have you had a chance to read your  
15 testimony?

16 A No.

17 Q You might make a note at page 116 of the  
18 transcript of yesterday, you did just that; use  
19 Campobello as an example along with Castle Grande and  
20 1308 and so forth.

21 At the time you made that comment to Mr.  
22 Ericson, were you of the view that Mr. Ericson was

1 ignoring the broad range of transactions emanating  
2 from Madison and was not considering the picture as a  
3 whole, and only focusing on isolating the individual  
4 parts?

5 A I believe my comment went that the report  
6 as I remember it, the preliminary report as I  
7 remember it, didn't look at how the Whitewater  
8 transaction might relate to other transactions or how  
9 the big picture might tie together, but that it  
10 focused on one transaction.

11 That was a matter of observation, that if  
12 someone were to pick up this report and say this is a  
13 report on Madison, it might not fairly reflect how it  
14 all fit together.

15 Q Did you have the view that Mr. Ericson and  
16 Mr. Patterson were not looking at the big picture?

17 A I wasn't sure what Mr. Ericson and Mr.  
18 Patterson were looking at at that point in time.

19 Q When you made that comment to Mr. Ericson,  
20 did he respond to you?

21 A I don't remember what his response was.  
22 He may have responded, he may not have. I don't

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1 know.

2 Q Did you have the view that he was  
3 deliberately ignoring any suggestions you might have?

4 A No.

5 Q Did he seem upset when he was listening to  
6 you?

7 A It was a general discussion. It was sort  
8 of, do you have any thoughts, here's a couple or  
9 three thoughts.

10 Q Did you have the view that Pillsbury, in  
11 issuing its reports, did not look at the big picture  
12 and did not look at the sum of the parts as well as  
13 the individual parts in these transactions?

14 A When?

15 Q When they issued their final report?

16 A I have no idea what they were doing at the  
17 time they issued the final report.

18 Q So you did not make it your business to  
19 follow up on it to see whether this sort of general  
20 point that you raised was reflected in the final work  
21 product of the firm?

22 A As I indicated yesterday or today, I had

1 no involvement in this after, really after November  
2 of '94. There were two or three or four hours  
3 subsequent I guess to January '95.

4 Q As you sit here today, do you have any  
5 reason to believe that the Pillsbury report did not  
6 reflect the whole constellation of activities  
7 emanating from Madison bank?

8 A Which Pillsbury report?

9 Q Take it read as a whole, all of the  
10 reports?

11 A All of the reports?

12 Q Yes.

13 A I don't know. I don't know how to answer  
14 that.

15 Q If you'll listen to my question again.

16 Do you have any reason to believe that  
17 Pillsbury did not take the whole constellation of  
18 activities of Madison, including Campobello, Castle  
19 Grande, 1308, into consideration in issuing its final  
20 report?

21 A I have no reason to believe they did and I  
22 have no reason to believe they didn't.

1 Q You just haven't taken the time to read  
2 through and make that analysis?

3 A That's correct.

4 Q In regard to your experience --  
5 Strike that.

6 Do you know whether the movement of funds  
7 from McDougal controlled entities, to and from the  
8 Whitewater Development account, was an example of a  
9 broader pattern of transfers as between McDougal-  
10 related entities during the times in question?

11 A I don't really think I can answer that  
12 question.

13 My sense, my memory, sitting here today,  
14 from reading the preliminary report was that there  
15 was a discussion about movement of funds among  
16 entities there, and my memory about some of the early  
17 transactions was that there was a movement of funds  
18 among various banking institutions or through various  
19 McDougal-controlled entities, so that my general  
20 impression was that there had been movements of  
21 moneys through different accounts with different  
22 institutions, many of which, if not all of which



1 related back at some point to Mr. McDougal or  
2 Madison.

3 Q Would it be fair to say that particularly  
4 when it appeared that the McDougals were strapped for  
5 cash, that they moved money among various entities,  
6 including Whitewater?

7 A I don't think I can safely respond to that  
8 question.

9 Q When you say safely, you mean  
10 knowledgeably?

11 A Knowledgeably, yes.

12 Q Was it not the case that you reviewed the  
13 so-called check kiting referral?

14 A By Ms. Lewis?

15 Q Yes.

16 A I reviewed that at least the summary of  
17 that referral.

18 Q The summary of the referral?

19 A I believe there's a referral, the summary  
20 of the referral. Some of the referrals, it's been  
21 two years now, may have had some attachments to them,  
22 I'm not sure.

1 Q What do you recall reviewing, a multi-page  
2 document or a shorter summary or what?

3 A I remember the criminal files probably  
4 constituted an entire banker's box of documents.

5 Q What do you recall reviewing?

6 A I reviewed some of that material. I may  
7 have reviewed all of the summaries of referrals in  
8 the sense of reading through the file to determine  
9 whether or not there was a roadmap provided for  
10 further inquiry and investigation.

11 Q Would you agree with the proposition that  
12 a successful check kite requires a movement of funds  
13 between more than one bank with the purpose of  
14 fooling one bank as to the wherewithal of the writer  
15 of the checks to make good on the checks?

16 A Well, that's a hypothetical question.  
17 There's probably a lot of different ways to do a  
18 check kite. You don't have to do it between banks.  
19 I guess you can use other kinds of financial  
20 institutions and brokerage accounts and other  
21 mechanisms, but you need at least one source to cover  
22 another source.

1 Q Is it not part of a definition of a check  
2 kite that somebody's got to be fooled?

3 A I wouldn't necessarily --

4 MR. GIUFFRA: Are you asking for a legal  
5 definition of a check kite?

6 BY MR. BEN-VENISTE:

7 Q If you don't know, you can say.

8 A A check kite can constitute whether  
9 someone is fooled or whether -- fooled is sort of a  
10 conclusory term here.

11 Q Or an attempt to fool someone?

12 A Well, it's an attempt to obtain, be able  
13 to cover certain losses on one account and remove  
14 funds and have use of those funds when in fact those  
15 funds may not be available in the account, to keep  
16 covering that pattern in order to generate accessible  
17 funds. It has an element of false pretense about it,  
18 yes.

19 Q So would you agree that a successful check  
20 kite requires the use of two or more banks between or  
21 among which money must be shuffled so as to fool one  
22 or the other of the banks into thinking that the

1 person who writes the check has the money when in  
2 fact that person does not have the money?

3 A In a general way. I've answered that  
4 question. I mean I disagree with the sense that it  
5 has to be between two banks.

6 Q If you substitute two financial  
7 institutions for banks, would you agree with it?

8 A I think to the extent that you have one  
9 account and you're withdrawing funds from that  
10 account in order to obtain access to those funds, and  
11 you are, at the same time, seeking to cover those  
12 funds with a source of money from some other source,  
13 it could be from a bank, it could be from a financial  
14 institution, I suppose it could be cash deposits, but  
15 there's a mechanism there to convey to the bank that  
16 there's funds accessible when in fact the funds are  
17 either in circulation one jump ahead or one jump  
18 behind.

19 Q So someone's got to be fooled or an  
20 attempt to fool someone?

21 A I said there was an element of false  
22 pretenses about it.

1 Q And that was the definition that was used  
2 in the report that you reviewed in December of 1995,  
3 is it not?

4 MR. COLE: The supplemental report on  
5 Whitewater.

6 MR. BEN-VENISTE: Right.

7 THE WITNESS: I didn't say I necessarily  
8 reviewed the supplemental report.

9 BY MR. BEN-VENISTE:

10 Q You didn't review it?

11 A I said I spent two or three hours looking  
12 through it.

13 MR. GIUFFRA: I think actually you're in  
14 error, Richard. He reviewed the first report, not  
15 the supplemental.

16 MR. COLE: He said he spent some time  
17 reviewing the second report, but he wasn't sure  
18 whether that second report was --

19 THE WITNESS: I wasn't sure. I spent  
20 three hours looking at something.

21 MR. GIUFFRA: He doesn't know whether that  
22 is --

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1 BY MR. BEN-VENISTE:

2 Q Let me show you the December 13, 1995  
3 report which is entitled Madison Guaranty Savings &  
4 Loan and Whitewater Development Company Supplemental  
5 Report to the Resolution Trust Corporation, prepared  
6 by Pillsbury, Madison & Sutro, dated December 13,  
7 1995, is something that you ever reviewed?

8 MR. GIUFFRA: Just so he has all the  
9 reports, he should also have the April 24 report,  
10 which he might have reviewed the drafts of.

11 (Handing document to witness.)

12 THE WITNESS: As I believe I testified  
13 previously, if this was the only report that was  
14 completed some time in late December '95, or of '94,  
15 this is December '95.

16 MR. GIUFFRA: You want to take a look at  
17 that report I just handed you. That's the  
18 preliminary report which you reviewed initially.

19 THE WITNESS: I reviewed the first draft  
20 or a preliminary draft of a Whitewater report in  
21 November of '94.

22 A Couple months later, whether it was a

1 revision of some report, or whether it was a  
2 different report, I spent three hours approximately  
3 reading parts of that report.

4 BY MR. BEN-VENISTE:

5 Q Were there any conclusions that you  
6 disagreed with?

7 A In what?

8 Q In either of the two reports that you  
9 reviewed?

10 A I didn't say I reviewed a second report.

11 Q You said you looked through it.

12 A I did say I looked through it, I didn't  
13 say I reviewed it or analyzed it.

14 Q When you looked through it, did you find  
15 any conclusions with which you disagreed?

16 A I frankly don't recall anything from  
17 whatever report it was in January of '95 that I spent  
18 three hours looking at.

19 Q The matters about which you had your  
20 conversation with Mr. Ericson after you reviewed the  
21 preliminary report, and you said you did review it,  
22 you said six or so hours at that?

1 A I think I said I spent 12 hours.

2 Q Ten or 12, all right.

3 What month was that?

4 A November of '94.

5 Q Did you mark up the report?

6 A I don't believe I did.

7 Q Did you write a memo about your review of  
8 the report?

9 A I don't believe I did.

10 Q Did you write a letter?

11 A I don't believe I did.

12 Q Did you write anything for your own use in  
13 simply making some notes about subjects to talk to  
14 Mr. Ericson and Mr. Patterson about?

15 A It's possible I did.

16 Q Do you recall one way or the other?

17 A I'm not certain today.

18 Q In your conversations, did you express  
19 concern that the firm was heading down the wrong path  
20 in the way it was going about performing its service  
21 for RTC?

22 A I expressed my comments, as I indicated



1 yesterday, Mr. Ericson either sent me a copy and said  
2 take a look at this, do you have any thoughts, or  
3 give me your impressions of this. It was either by  
4 telephone or one time when he was in Washington we  
5 spent 45 minutes or an hour chatting about it, and I  
6 conveyed to him the questions I conveyed yesterday.

7 Q Were you alarmed?

8 A I expressed my views. I wouldn't  
9 characterize them one way or the other.

10 Q You might characterize them as alarmed?

11 A I said I wouldn't characterize them in any  
12 way other than conveying my impressions of that  
13 report.

14 Q Did you suggest that you ought to sit down  
15 with others who were working on this project to fill  
16 them in on your views?

17 A No, I did not.

18 Q You did not circulate any memo, you've  
19 indicated?

20 A That's correct.

21 Q Did you take any steps to talk to anyone,  
22 other than Mr. Ericson about this matter at that

1 point, or subsequent thereto?

2 A No, I don't think so. Mr. Ericson was in  
3 regular contact with Mr. Patterson. Mr. Ericson had  
4 asked me for my comments to him. And I conveyed  
5 those comments and that impression, as I indicated.  
6 I had not been involved in this in any great depth  
7 certainly since August, and in many respects since  
8 April of '94. He asked for my thoughts on it, I  
9 provided my thoughts to him.

10 MR. GIUFFRA: Was it your understanding  
11 that Mr. Ericson was the author?

12 THE WITNESS: Yes.

13 BY MR. BEN-VENISTE:

14 Q Have you, from time to time in your  
15 career, felt that a record needed to be made of the  
16 way an investigation was going or the way agents  
17 under your supervision were conducting themselves  
18 that you put in writing your concerns?

19 MR. GUTKIN: Vague and ambiguous.

20 BY MR. BEN-VENISTE:

21 Q You can answer.

22 A I'm not sure I understand the question.

1 Q Have you, from time to time in your  
2 career, when something concerned you, written it down  
3 by way of a letter or memorandum to the file, or  
4 memorandum to an agency?

5 MR. GIUFFRA: At any time since law  
6 school?

7 THE WITNESS: I probably have at some  
8 point since law school.

9 BY MR. BEN-VENISTE:

10 Q You know, being in the government, that if  
11 you put something in writing, somebody's got to pay  
12 attention to it, it's got to be dealt with, don't  
13 you?

14 A I don't necessarily subscribe to that  
15 view?

16 Q You don't?

17 After dealing with the FBI for years and  
18 years, and as assistant U.S. attorney and U.S.  
19 attorney, you don't know if you write a memorandum  
20 that somebody has got to act one way or another on  
21 what you put down?

22 A I don't necessarily subscribe to that

1 view.

2 Q What do you think? They just ignore it?

3 A I don't necessarily agree with your view.

4 Q You don't necessarily agree with it?

5 A That's correct.

6 Q How do you disagree with it?

7 A I don't necessarily agree that someone has  
8 to act just because you write something down.

9 Q Once you make a record of it, would you  
10 agree --

11 MR. GIUFFRA: This is getting into the  
12 realm of the hypothetical.

13 BY MR. BEN-VENISTE:

14 Q -- that it's getting more likely that  
15 someone is going to have to address the issue that  
16 you've addressed?

17 A It sounds like you're dealing with your  
18 experience in bureaucratic politics, Mr. Ben-Veniste.  
19 If that's your experience, then you can testify about  
20 that.

21 MR. GIUFFRA: We've been looking for a way  
22 to put him on the ropes.

1 MR. BEN-VENISTE: I don't have any  
2 experience in bureaucratic politics. Maybe at your  
3 level, it was.

4 THE WITNESS: That's true. You were a  
5 much more senior prosecutor than I was.

6 MR. BEN-VENISTE: That's true, I've got  
7 gray hair, but bureaucratic politics is not my forte  
8 and my level of experience.

9 But I do know if you write something down,  
10 there's a record of it, somebody can't say that they  
11 didn't quite hear it that way.

12 Just as your partners have said with  
13 respect to the concerns that you've indicated you've  
14 expressed.

15 BY MR. BEN-VENISTE:

16 Q The simple fact is that you did not  
17 circulate a memo?

18 A I did not circulate a memo. I did not see  
19 it as my role or my position, given my assignment of  
20 Mr. Patterson to circulate a memo or the request from  
21 Mr. Ericson.

22 Q The fact is that according to your time

---

1 records, you met with Mr. Ericson on November 7th to  
2 review issues in the draft report and you spent two  
3 hours and billed \$400, is that right?

4 (Handing document to witness.)

5 MR. GIUFFRA: Could I have a copy of that  
6 record?

7 MR. BEN-VENISTE: Sure.

8 THE WITNESS: This says, and review of  
9 draft report, so that's incorrect. It says I spent  
10 two hours a) reviewing the report, and b) meeting  
11 with Mr. Ericson.

12 BY MR. BEN-VENISTE:

13 Q I see. And how long did you meet with Mr.  
14 Ericson?

15 A I'm not sure. My sense was it probably  
16 was, it could have been three-quarters of an hour to  
17 an hour, but somewhere probably three-quarters to an  
18 hour. I don't recall specifically at this point.

19 Q And then there was a revised report that  
20 you reviewed, was there not, thereafter?

21 A We've already discussed that.

22 Q And according to your billing records, you

1 reviewed and analyzed Mr. Ericson's draft report.  
2 Is that correct?  
3 A May I see my billing records, please?  
4 Q That would be on the 11th of November.  
5 (Handing document to witness.)  
6 THE WITNESS: I believe that would be,  
7 that probably would be the same report.  
8 Could I see the entry for the 7th of  
9 November, please?  
10 MR. BEN-VENISTE: This is the 5th.  
11 Where's the 7th?  
12 (Handing document to witness.)  
13 THE WITNESS: I believe this would be the  
14 same report, although I'm not positive. I believe  
15 it's the same report, unless he did something turned  
16 around within two or three days there.  
17 BY MR. BEN-VENISTE:  
18 Q So you continued reading the report?  
19 A I believe that's correct.  
20 Q And thereafter, on the 14th, you spent  
21 another hour reviewing the revised Ericson report,  
22 correct?

1 (Handing document to witness.)  
2 THE WITNESS: That's correct.  
3 BY MR. BEN-VENISTE:  
4 Q Did you review GAO Reports analyzing the  
5 Castle Sewer & Water documents? Do you remember  
6 doing that?  
7 A Did I review GAO reports?  
8 Q Yes.  
9 A When?  
10 Q In November?  
11 A I don't recall whether I did or not, or  
12 whether it was Mr. Goss, Mr. Finnegan, or someone  
13 working on that forwarded a memo to me.  
14 Q Do you remember that subject matter being  
15 something you looked at at that point?  
16 A Castle Sewer & Water was subject matter I  
17 remember early on in the investigation because I  
18 testified yesterday it was one of the subject matters  
19 that was to be analyzed, and I reviewed certain  
20 memoranda that were related to that.  
21 Q Do you remember that you were continuing  
22 to look at that material in November of '94?



1 A Not necessarily, unless someone copied me  
2 on a memo. I may have looked at it in that case.

3 Q Here it says you billed \$450 on the 15th  
4 which included a review of Castle Sewer & Water  
5 material.

6 (Handing document to witness.)

7 BY MR. BEN-VENISTE:

8 Q Does that refresh your recollection?

9 A Well, it doesn't say that. It says I had  
10 review of Independent Counsel documents, and that  
11 would be a related question. And then there's review  
12 and analysis of a GAO report on the Whitewater Castle  
13 Sewer & Water documents, and there was a review of  
14 Castle Sewer & Water documents, so I did review some  
15 of the Castle Sewer & Water documents, something that  
16 was forwarded to me by someone.

17 Q To what purpose, do you recall?

18 A Pardon?

19 Q To what purpose, if you recall, were you  
20 reviewing that?

21 A To determine whether or not I would  
22 provide any comment to him. It was forwarded to me

1 for review and certainly the Independent Counsel  
2 pleadings, I don't know what they were sitting here  
3 today, but it may be that that was another wave of  
4 pleadings and someone was forwarding them to me to  
5 take a look at. It may not be. I don't know.

6 MR. GIUFFRA: Mr. Stephens --

7 MR. BEN-VENISTE: Excuse me. Do not  
8 interrupt me again. Don't interrupt me, please.

9 MR. GIUFFRA: You --

10 MR. BEN-VENISTE: I did not interrupt you  
11 yesterday. Don't do it now. Just make a note to  
12 yourself.

13 MR. GIUFFRA: The record will reflect that  
14 minority counsel interrupted me throughout my  
15 examination.

16 MR. BEN-VENISTE: I didn't interrupt. If  
17 you don't mind, I've indicated that I've got to go.  
18 You can cut to the chase or race around the room, or  
19 do whatever you want, but don't interrupt me.

20 MR. GIUFFRA: Will you try to be accurate?

21 MR. BEN-VENISTE: Off the record.

22 MR. GIUFFRA: On the record.

1 MR. BEN-VENISTE: You are obstructing me.

2 MR. GIUFFRA: I'm asking a question. Do  
3 you try to be accurate in maintaining your time?

4 MR. BEN-VENISTE: It's Howdy Doody time,  
5 okay. Let's dance around and get this important  
6 question answered.

7 Go ahead, Mr. Giuffra. Take our time to  
8 ask this question. Please restate the question.

9 MR. GIUFFRA: Do you try to be accurate in  
10 maintaining your time records, Mr. Stephens?

11 THE WITNESS: Yes.

12 MR. BEN-VENISTE: Thank you for  
13 interrupting me with that utterly stupid question.

14 MR. GIUFFRA: I don't need to characterize  
15 anything.

16 THE WITNESS: I think the taxpayer will be  
17 interested in how you are conducting yourselves here  
18 today.

19 MR. BEN-VENISTE: Unfortunately, we don't  
20 keep time records. You, as a taxpayer, can file  
21 whatever you need to file, Mr. Stephens. I repeat  
22 that was an utterly stupid and unnecessary

1 interruption.

2 MR. GIUFFRA: Continuing objection to  
3 calling my examination unprofessional.

4 MR. BEN-VENISTE: Keep cluttering up the  
5 record, go ahead.

6 MR. GIUFFRA: Your comments are  
7 unprofessional as well.

8 MR. BEN-VENISTE: The one about being  
9 stupid or some other one?

10 Let me reiterate how stupid it was for you  
11 to interrupt me for that question.

12 MR. GIUFFRA: You're just demonstrating  
13 you're acting like a child.

14 MR. BEN-VENISTE: Thank you, Mr. Giuffra.

15 BY MR. BEN-VENISTE:

16 Q According to Pillsbury, Madison & Sutro's  
17 report issued on April 24, 1995, on the subject of  
18 Madison Guaranty Savings & Loan and Whitewater  
19 Development Company, Inc., the evidence suggests that  
20 the Clintons had little direct involvement in  
21 Whitewater's financial management until 1988, by  
22 which time all of the lots had been sold, and

1 McDougal had suffered a nervous breakdown.

2 Do you have any reason to take issue with  
3 that conclusion?

4 A I have no basis to agree or disagree with  
5 it.

6 Q From that same report at page five, the  
7 Pillsbury Report concluded that the International  
8 Paper deal did not benefit Whitewater or the  
9 Clintons. To the contrary, it left Whitewater with a  
10 mortgage of \$440,760, but no corresponding assets,  
11 and it led to litigation and entry of a \$470,126.65  
12 judgment against Whitewater.

13 Do you have any reason to take issue with  
14 that conclusion?

15 A I have no basis to agree or disagree with  
16 it.

17 Q So far as one can determine from the  
18 available documentary evidence, little Whitewater  
19 financial information was transmitted to the  
20 Clintons. That's at page 24 of your conclusion.

21 Do you have any reason to take issue with  
22 that?

1 A I have no basis to agree or disagree with  
2 that conclusion or that statement.

3 Q With respect to the International Paper  
4 transaction, the report further concludes the  
5 transaction did not benefit Whitewater or the  
6 Clintons.

7 Do you have any reason to disagree with  
8 that conclusion?

9 A I have no basis to agree or disagree with  
10 that statement.

11 MR. GIUFFRA: What document are you  
12 reading from, Richard?

13 MR. BEN-VENISTE: Pillsbury, Madison &  
14 Sutro.

15 MR. GIUFFRA: Which report?

16 MR. COLE: What he just read was from the  
17 April 25th, page 5.

18 MR. BEN-VENISTE: If you listened when I  
19 read, I'll give you the pages.

20 From the Madison Guaranty Savings & Loan  
21 and Whitewater Development Company, Inc. Report of  
22 December 13, 1995, the conclusion is overall the new

evidence tends to confirm the preliminary report's observation that the movement of funds among McDougal controlled entities and from them to Whitewater was not unique but instead was one example of a broader pattern of funds transferred by the McDougals between and among entities they owned or controlled, apparently motivated by the McDougals' need for funds with which to pay their debts.

That's at page two.

BY MR. BEN-VENISTE:

Q Do you have any reason to disagree with that conclusion?

A Could you show me that, please?

Q You want to see it?

A Yes.

Q All right.

(Pause.)

(Handing document to witness.)

(Discussion off the record.)

BY MR. BEN-VENISTE:

Q Here you go, page two of the report that I read from, the portion that has the carat.

(Handing document to witness.)

(Pause.)

A What's your question?

Q The question again is do you have any reason to take issue with that conclusion?

A I have no particular reason to agree or disagree.

Q This is one of the matters that you reviewed, was it not?

A I didn't review this, I don't believe.

Q You didn't review the issue of the movement of funds by Mr. McDougal, the so-called check kiting?

A You asked me if I had reviewed Jean Lewis' criminal referral. I'm not sure that this is reflective of that referral.

Q You don't think it is?

A It could be. I don't know as I sit here today.

Q You don't know one way or the other?

A Not one way or the other.

Q But as you sit here today, you have no



1 basis upon which you could conclude that this  
2 conclusion by the Pillsbury firm is erroneous?

3 A As I said, I have no basis to agree or  
4 disagree with it.

5 Q On the basis of having reviewed the Jean  
6 Lewis referral, and any other material that you  
7 reviewed on the issue of check kiting, do you have  
8 any basis to take issue with this conclusion?

9 A I stand by my prior statement.

10 Q That's a no?

11 A That's a I have no basis to agree or  
12 disagree.

13 Q Now do you know what a passive investor  
14 is?

15 MR. GUTKIN: In what context?

16 MR. BEN-VENISTE: In the real estate  
17 investment.

18 MR. GUTKIN: Limited partnership? Can you  
19 flesh it out a little bit?

20 MR. BEN-VENISTE: In a real estate  
21 partnership or small corporation, closely held  
22 corporation.

1 THE WITNESS: In general, that would be an  
2 investor who invests funds but does not take an  
3 active management role in the venture.

4 BY MR. BEN-VENISTE:

5 Q So the question of activity in management  
6 would be what the passivity would refer to as a  
7 passive investor?

8 A I believe so.

9 Q A person could be active as all get out in  
10 trying to get funds together to put into an  
11 investment. That wouldn't make that person an active  
12 investor in that investment?

13 A It probably would depend on what the  
14 nature of the investment was.

15 Q If it was a real estate investment and  
16 somebody sold hot dogs on the corner to get the money  
17 up to put into that investment, that wouldn't make  
18 him an active investor in the real estate venture?

19 A Right.

20 Q Or if he borrowed the money to go into  
21 that investment from his Uncle Louie, that wouldn't  
22 make him an active investor in the real estate

1 transaction, would it?

2 A That in and of itself probably would not.

3 Q Even if he was real active in trying to  
4 get Uncle Louie to lend him the money?

5 A Depending on what he did after he got  
6 Uncle Louie to lend him the money.

7 Q What he did viz a viz the real estate  
8 investment?

9 A Correct, yes.

10 Q In that regard at page 71 of the  
11 December 13, 1995 Pillsbury report issued by your  
12 firm, do you have any reason to take issue with the  
13 conclusion set forth as follows:

14 Putting aside, for the moment, the legal  
15 significance of the phrase "passive investor" --

16 Let me give you this to read along with  
17 me, it will save time. It's the next page.

18 (Handing document to witness.)

19 BY MR. BEN-VENISTE:

20 Q Are you with me?

21 A Go ahead.

22 Q -- the evidence is essentially consistent

1 with this assertion for the relevant period (ending  
2 in 1986) the evidence suggests that the McDougals and  
3 not the Clintons had managerial control over the  
4 enterprise, received annual reports and regular  
5 financial summaries instead, as the Clintons suggest,  
6 their main contact with Whitewater seems to have  
7 consisted of signing loan extensions and renewals.

8 A Question?

9 Q The question came at the front end of that  
10 quote, which is, do you have any reason to take issue  
11 with the conclusion of your firm in its report on  
12 that subject?

13 A I don't know if this is a conclusion. I'm  
14 not sure of the context in which this is placed, but  
15 I have no particular reason to agree or disagree with  
16 this.

17 Q What makes you think it's not a  
18 conclusion?

19 A I can't tell looking at one page here of  
20 this document is a page of conclusions or it's a  
21 statement in regard to an analysis, but --

22 Q At page 78 --

1 MR. COLE: For what it's worth, I think  
2 the section we were just reading from is headed  
3 "Conclusions" but it may be relevant to find the  
4 beginning of that particular section.

5 (Handing document to witness.)

6 BY MR. BEN-VENISTE:

7 Q Do you have any reason to take issue with  
8 the conclusion at page 78 of the same report issued  
9 by your firm that there is no basis to charge the  
10 Clintons with any kind of primary liability for fraud  
11 or intentional misconduct?

12 This investigation has revealed no  
13 evidence to support any such claims, nor would the  
14 record support any claim of secondary or derivative  
15 liability for possible misdeeds of others.

16 A Taken in this context, no, I have no basis  
17 to agree or disagree with this. I don't know what  
18 has preceded that to lead to that analysis.

19 Q The recommendation at page 78 by your firm  
20 is that no further resources be expended on the  
21 Whitewater part of this investigation.

22 Do you have any reason to believe that

1 this conclusion was not the result of an extensive  
2 analysis of the available facts and is based on the  
3 legitimate and honest evaluation of the facts?

4 A I have no independent basis to disagree or  
5 subscribe to that statement.

6 Q Don't you have some independent basis in  
7 terms of the character and ability of the individuals  
8 who came to this conclusion?

9 A And who are they?

10 Q Mr. Patterson and Mr. Ericson.

11 A Is this Mr. Patterson's report? I mean,  
12 I'm just asking, did he subscribe to this report?

13 MR. COLE: This is the report that Mr.  
14 Ericson drafted, and Mr. Giuffra can correct me if  
15 I'm mistaken, but Mr. Patterson testified that he  
16 reviewed the report and agreed with its analysis and  
17 conclusions.

18 MR. GIUFFRA: I think that's a little bit  
19 of overstatement.

20 MR. COLE: I think I asked you precisely  
21 that question.

22 THE WITNESS: Is the question do I

1 question Mr. Ericson's and Mr. Patterson's ability,  
2 the answer is no, I do not.

3 BY MR. BEN-VENISTE:

4 Q Do you question their integrity?

5 A No, I do not.

6 Q Do you have any reason to believe that  
7 they would come to such a conclusion other than on  
8 the basis of a careful analysis of the facts?

9 A I have no particular reason to believe  
10 they would do so other than an analysis of the facts  
11 as they saw them or as they found them.

12 Q Do you have any question, or as they say  
13 in jury instructions, mental reservation about that?

14 A I don't know what they looked at and what  
15 documents they looked at in analyzing the issues  
16 necessarily. That's the only issue that I would  
17 suggest that they may not have had a complete  
18 picture.

19 MR. GIUFFRA: You also don't know if the  
20 RTC was looking at this --

21 MR. BEN-VENISTE: Please don't interrupt  
22 me, Mr. Giuffra. You've had hours and hours and

1 hours of uninterrupted and unfettered access to this  
2 witness.

3 MR. GIUFFRA: I was just trying to make  
4 sure the record was clear.

5 BY MR. BEN-VENISTE:

6 Q My question to you is, do you have any  
7 basis upon which you would question as to whether  
8 this conclusion was the result of a careful and  
9 thoughtful and comprehensive analysis of all of the  
10 available facts?

11 A I indicated previously I have no basis to  
12 question the author's integrity, his skill. I do not  
13 know, however, what the source of facts, the scope of  
14 facts, or the level of review of the client agency  
15 was with regard to this statement.

16  
17  
18  
19  
20  
21  
22



1 Q Do you have any reason to take issue with  
2 the conclusion reached in the 12/28/95 report by your  
3 firm that Whitewater did not meaningfully contribute  
4 to Madison Guaranty's failure?

5 A I have no basis to either agree or  
6 disagree with that.

7 (Pause.)

8 Q Did you look at in any way the report  
9 relating to the Rose Firm's conduct of the  
10 malpractice litigation against Frost & Company?

11 A When was that? Was that the Pillsbury  
12 Report?

13 MR. GIUFFRA: December 28th.

14 BY MR. BEN-VENISTE: (Resuming)

15 Q Yes, that's a Pillsbury Report. But  
16 underlying the report, were you familiar at all with  
17 any issue associated with the Rose Firm representing  
18 the RTC or its predecessor against Frost & Company?

19 A I remember early on there was an issue  
20 about Frost litigation, and I think settlements  
21 related to that where that may bar recoveries.

22 Q I'm sorry?

1 A I think there was an issue where there was  
2 a settlement arising out of the Frost litigation that  
3 may bar subsequent recovery, but I may be confusing  
4 an issue.

5 I remember that there was an issue of  
6 Frost & Company, which I believe was an auditing  
7 company, an issue about liability there, or an  
8 indication about that; but I never reviewed this  
9 report. I never saw that report.

10 Q As you sit here today, is it fair to say  
11 that you really have no recollection about what the  
12 issue was in that?

13 A That's probably accurate.

14 Q I take it you would have no basis upon  
15 which to challenge the conclusions reached by your  
16 firm and the partners who analyzed that issue for the  
17 RTC?

18 A That's correct. I would have no basis to  
19 agree or disagree with that analysis.

20 Q Do you have any basis to disagree with the  
21 conclusions reached by your firm at page 4 of its  
22 December 28, 1995, report relating to the

1 representation of Madison Guaranty by the Rose Law  
2 Firm where the firm concludes that the record has not  
3 established the Rose Law Firm's work from Madison  
4 Guaranty involved misconduct warranting the  
5 institution of legal proceedings against it by the  
6 RTC?

7 A Could I see that report, please?

8 Q Sure.

9 (Pause.)

10 (Handing document to the witness.)

11 Where it says under IV, Results of  
12 Investigation --

13 MR. COLE: That is a bound collection of  
14 reports. They are all bound in there, so you will  
15 have to find it. If you want to see the cover page  
16 of that particular report, you will have to turn  
17 back.

18 (Pause.)

19 THE WITNESS: You are directing my  
20 attention to which section of this?

21 BY MR. BEN-VENISTE: (Resuming)

22 Q The record does not establish that the

1 Rose Law Firm's work for Madison Guaranty involved  
2 misconduct leading to an institution of legal  
3 proceedings against it by the RTC --

4 A I didn't write this report. I didn't  
5 review this report, and I have no basis to agree or  
6 disagree with that statement.

7 Q So you have no grounds upon which you  
8 would challenge that conclusion?

9 Is that correct?

10 A I have no basis to agree or disagree with  
11 it.

12 Q Do you not have confidence in the  
13 abilities of Mr. Ericson and Mr. Patterson to reach  
14 conclusions such as the ones I have referred to you  
15 on the basis of their professional abilities and  
16 level of skill?

17 A I previously stated my views on their  
18 professional abilities.

19 Q Doesn't that provide you with a basis upon  
20 which to presume that the conclusion that they reach  
21 are well-founded in fact?

22 A I don't know what factual basis they had

1 available to them to analyze this, and whether or not  
2 they had all of the facts; or whether anyone else  
3 suggested that this was a conclusion that should be  
4 here.

5 So I have no basis.

6 I didn't read this report, or I didn't  
7 write this report. I didn't review this report.

8 So --

9 Q Let me break that down.

10 The last thing you said was, you had no  
11 reason to believe that someone else did not tell them  
12 to come to this conclusion, in substance?

13 A I have no basis to know exactly what the  
14 factors were that they considered in reaching this  
15 conclusion. So it is impossible for me to comment on  
16 agreeing, subscribing, or disagreeing with that.

17 Q Do you have some reason to believe that  
18 Messrs. Patterson and Ericson would state a  
19 conclusion such as the last one I have read to you  
20 simply because someone told them to come to that  
21 conclusion?

22 A I have no basis to say that.

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1 Q That was my point; is whether you do not  
2 presume, based on the professional standing of Mr.  
3 Patterson and Mr. Ericson, that the conclusions that  
4 they reached are well founded in fact and not based  
5 on speculation?

6 A I do not think it is appropriate for me to  
7 "presume" anything.

8 Q You don't? These are things that happen  
9 every day in my life.

10 (Pause.)

11 (Handing document to the witness.)

12 Do you have any reason to question the  
13 appropriateness of the conclusion reached by your  
14 firm in its February 25th, 1995, supplemental report  
15 at page 23 where it says:

16 "Mrs. Clinton's recollections and Richard  
17 Massey's recollections differ in some respect, but  
18 for present purposes the differences are not  
19 material. It makes little difference who was right.  
20 There is no hint of fraud or intentional misconduct  
21 in either version, and the mere act of retaining the  
22 Rose Law Firm did not harm Madison Guaranty in any

1 respect."

2 A What was the question?

3 Q Do you have any reason to question the  
4 appropriateness of the conclusion reached by your law  
5 firm in that regard?

6 A As I indicated, I did not write this  
7 report. This is not my report. It is the report of  
8 our firm, and I have no basis, or any other part of  
9 our firm to agree or disagree with that.

10 Q Do you have any reason to believe that  
11 there was fraud or misconduct in connection with the  
12 retaining of the Rose Law Firm?

13 A That's an issue for --

14 Q Can you answer that "yes" or "no"?

15 A That's for the Independent Counsel, I  
16 guess, to determine.

17 Q Do you have any reason to believe that  
18 there was any fraud or any intentional misconduct in  
19 the retaining of the Rose Law Firm by Madison  
20 Guaranty in 1985?

21 MR. GIUFFRA: Are you asking also based on  
22 his reading of news accounts?

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1 THE WITNESS: Based on what?

2 BY MR. BEN-VENISTE: (Resuming)

3 Q Based on anything that you have reviewed,  
4 any evidence that you have reviewed --

5 MR. GIUFFRA: Including news accounts,  
6 testimony?

7 MR. BEN-VENISTE: Is that "evidence"?  
8 Will you be quiet, please?

9 MR. GIUFFRA: Yesterday when we had the  
10 deposition, Richard, none of this unpleasant conduct  
11 occurred.

12 MR. BEN-VENISTE: If you would be quiet  
13 for awhile, it wouldn't. This witness will not have  
14 words put in his mouth, I guarantee you. If you will  
15 be quiet, we will proceed in an appropriate way.

16 THE WITNESS: What is your question?

17 BY MR. BEN-VENISTE: (Resuming)

18 Q Do you have any basis to believe that the  
19 conclusion that the retaining of the Rose Law Firm  
20 did not harm Madison Guaranty in any respect is not  
21 inaccurate?

22 A Based on?



1 Q Based on anything you know, Mr. Stephens.  
2 Here is the conclusion of your law firm. We know it  
3 is not the "Stephens Report." That has been made  
4 very clear. Nor should anybody represent this to be  
5 the Stephens report. It is the Pillsbury, Madison &  
6 Sutro Report.

7 Okay. Now I am asking you: Do you have  
8 any reason to believe that your firm's conclusion  
9 that the Rose Law Firm's retention by Madison did not  
10 harm Madison in any respect is inaccurate?

11 A I have no basis to either agree or  
12 disagree with your statement.

13 Q It's not my statement. It is your firm's  
14 statement.

15 A I have no basis to agree or disagree with  
16 that based on the work I did on this project.

17 (Pause.)

18 Q In the February 25, 1996, Supplementary  
19 Report, your firm concluded at page 163, and I will  
20 find that for you in the official version --

21 (Pause.)

22 (Handing document to the witness.)

1 BY MR. BEN-VENISTE: (Resuming)

2 Q "It simply would not be persuasive that  
3 for \$21,000 McDougal corrupted the Rose Law Firm and  
4 convinced half a dozen lawyers, most of whom he did  
5 not know, to join him in a scheme to violate the law.  
6 Odd as he might seem, McDougal did not involve large  
7 groups of strangers in his schemes. Instead,  
8 McDougal typically involved a close group of long-  
9 time friends and trusted associates in his plans, and  
10 no one else. Typically it was the same people over  
11 and over, friends and vassals who dated back to  
12 McDougal's youth.

13 Do you have any reason to believe that  
14 that conclusion is in some way erroneous or  
15 inaccurate or fraudulent?

16 A I have no basis to agree or disagree with  
17 that conclusion.

18 Q Do you have any notion of the number of  
19 people who McDougal involved in his schemes on the  
20 basis of the material that you did review?

21 A No present recollection sitting here  
22 today. I remember early on in February or March, I

1 think, the RTC and we had prepared a list of perhaps  
2 30 or 40 people that may have been related to various  
3 McDougal schemes.

4 Q And all of that is more or less a distant  
5 memory to you?

6 A I don't have a current recollection of  
7 specific individuals -- perhaps some individuals, but  
8 not others.

9 Q Do you have confidence that Mr. Ericson  
10 and Mr. Patterson carefully reviewed the transactions  
11 and the individuals who were involved before they  
12 came to the conclusion that McDougal typically  
13 involved a close group of long-time friends in his  
14 plans, and no one else?

15 A I don't know what they reviewed or who  
16 they talked to, necessarily.

17 Q But do you have any reason to believe that  
18 they formed this conclusion on the basis of  
19 incomplete or erroneous information because someone  
20 simply told them to do so?

21 A I have no basis to either agree or  
22 disagree with that.

1 Q You think they might have come to this  
2 conclusion because someone told them to do so?

3 A I don't know what body of facts they had  
4 available, or witnesses they had available, or  
5 whether they talked to all the witnesses, or whether  
6 they read all the documents, or whether anyone  
7 suggested that they talk to additional people or  
8 didn't talk to additional people. I just don't know.

9 Q Do you think it is possible?

10 A What's possible?

11 Q That Mr. Ericson and Mr. Patterson could  
12 have come to the same conclusion because someone  
13 instructed them to come to this conclusion?

14 A I think it is possible.

15 Q Could you just answer my question, and  
16 then elaborate?

17 A I'll answer the question.

18 I think it is possible that in a civil  
19 investigation you don't have the opportunity to talk  
20 to all the witnesses that you wish you might talk to,  
21 or hope you might talk to, to get a complete picture  
22 versus a criminal investigation where you have

1 subpoena authority.

2           So it is possible that in a civil  
3 investigation that they did not, or were not able to,  
4 or because the witnesses essentially were operating  
5 under the aegis of the Independent Counsel, they were  
6 not able to get access to everybody they might wish  
7 they had access to. Whether they did or not, I don't  
8 know.

9           MR. BEN-VENISTE: Could you read back my  
10 question? I would appreciate it if you would answer  
11 it.

12           MR. GIUFFRA: I think he did answer your  
13 question.

14           MR. BEN-VENISTE: And you are just wrong  
15 on one more thing.

16           (The record is read as requested.)

17           THE WITNESS: Anything is possible.

18           BY MR. BEN-VENISTE: (Resuming)

19           Q   You are saying that it is possible that  
20 your partners were told to come to a conclusion that  
21 they put in a report just because someone told them  
22 to do that, and not because the evidence supported

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1 it?

2           A   I have no basis to understand that.

3           Q   You said it's possible.

4           A   You said "is it possible?" and I said  
5 anything is possible. But I indicated I was not  
6 aware of any basis for that.

7           Q   "Do you have reason to believe that if  
8 your partner, Mr. Patterson, answered the question,  
9 Did the RTC have final signoff authority if the RTC  
10 officials had disagreed with the conclusions stated  
11 in your report, you obviously would have had to  
12 change those conclusions?"

13           "A   No.

14           "Q   And why is the answer 'no'?"

15           "A   The answer is 'no' because we were  
16 asked for -- we were an independent law firm and we  
17 were asked to perform an independent investigation.

18           "I firmly believe that if the RTC had  
19 asked us to change our conclusions, the stated  
20 conclusion, that they did not agree with, we would  
21 not have done that."

22           Do you have any reason to believe that Mr.

1 Patterson was not honest in that answer?

2 A What were you just reading from?

3 Q His deposition.

4 A When was that?

5 Q May the 14th.

6 A I have no reason to question Mr.

7 Patterson's statement.

8 (Pause.)

9 Q Were there any specific individuals who  
10 you suggested -- strike that.

11 MR. GUTKIN: Can we take a two- or three-  
12 minute break?

13 MR. BEN-VENISTE: Let me just look at one  
14 more thing.

15 (Pause.)

16 BY MR. BEN-VENISTE: (Resuming)

17 Q Let me just finish up this line with this  
18 material from Mr. Ericson's deposition at page 296.  
19 I am going to ask you whether you have any reason to  
20 disbelieve the accuracy of the answers to these  
21 questions by Mr. Ericson.

22 "Q During the process of drafting all of

1 these reports, did anyone at the RTC ever direct you  
2 that you should reach a certain conclusion, or not  
3 reach a certain conclusion?

4 "A No.

5 "Q All of these reports reflect your  
6 best independent professional judgment as to what  
7 conclusions were reported in the reports?

8 "A Yes.

9 "Q And you don't feel the ultimate  
10 conclusions, leaving aside stylistic edits or  
11 organizational suggestions were influenced or  
12 directed by the RTC?

13 "A No. Not at all. No.

14 "Q And in terms of the conclusions, to  
15 use your earlier characterization, the buck stops  
16 with your firm?

17 "A Yes, it is our name going on this,  
18 and so on."

19 Do you have any reason to disbelieve that  
20 Mr. Ericson's answers to those questions were not  
21 accurate and truthful?

22 A I believe that's an accurate statement of



1 Mr. Ericson's beliefs and views.

2 Q Do you have any reason to believe that the  
3 answers were not factually correct?

4 A I have no basis to agree or disagree that  
5 they were factually correct other than I believe  
6 Mr. Ericson's answers.

7 MR. BEN-VENISTE: Let's take a break.  
8 (Recess.)

9 FURTHER EXAMINATION

10 BY MR. GIUFFRA:

11 Q Mr. Stephens, do you believe you were  
12 qualified to conduct the investigation that the RTC  
13 retained Pillsbury to undertake concerning Madison  
14 Guaranty?

15 A Yes.

16 Q Would you please just state for the record  
17 why you believe you were qualified to undertake this  
18 investigation?

19 A I practiced law for approximately a little  
20 over 20 years. Much of that was spent with the  
21 Department of Justice handling criminal  
22 investigations both at the Grand Jury level and the

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1 trial level.

2 A substantial part of that was also at  
3 main Justice where I had responsibility for a variety  
4 of issues, including complex civil and criminal  
5 matters. During my services as United States  
6 Attorney, we handled hundreds of cases of a complex  
7 nature.

8 Q Both criminal and civil?

9 A Both civil and criminal.

10 Q You've been involved in political  
11 corruption cases?

12 A We handled a large number of political  
13 corruption cases. They tend to be relatively  
14 complex, dealing with complex legal theories as well  
15 as complex factual issues, as well as difficult  
16 witness issues.

17 Q And you've been involved in cases  
18 involving complex fraud?

19 A That's correct. I've been involved in a  
20 number of cases involving -- I set of a separate  
21 economic crimes section while I served as United  
22 States Attorney. We had a number of fraud cases

1 there.

2 I also was involved in -- assisted in, or  
3 supervised certain fraud cases while I was at the  
4 Department of Justice. So I have overseen and was  
5 involved in a number of investigations relating to  
6 HUD fraud, bank fraud, securities fraud, various  
7 kinds of consumer fraud, various kinds of scams.

8 Q How many cases have you tried to verdict?

9 A Approximately 50, 55, 60, I don't know.

10 Q With regard to this particular matter, no  
11 one suggested to you that you weren't in any way not  
12 qualified to participate in this investigation?

13 A No. On the contrary. I think when we  
14 were putting together the team of people to work on  
15 it, I think there was a sense of that. I was a part  
16 of that team because of the investigative skills I  
17 had, as well as my understanding of the criminal  
18 investigative process that might assist in doing  
19 civil litigation.

20 Q Does Mr. Ericson have any experience as a  
21 prosecutor?

22 A I believe so.

1 Q Mr. Patterson's experience as a prosecutor  
2 would be limited to service that he did while he was  
3 in the military?

4 A I don't know what his experience is as a  
5 prosecutor.

6 Q This is a question just for aficionado of  
7 Watergate. Did you report to Mr. Ben-Veniste when  
8 you were with the Watergate Special Prosecutor?

9 A No, I did not.

10 Q To whom did you report?

11 A I reported initially to Mr. Jaworski who  
12 was the Special Prosecutor initially; then, Mr. Ruth.  
13 I reported initially to Mr. Lacchavera, who was head  
14 legal counsel, and then to Peter Krimmer who replaced  
15 Mr. Lacchavera.

16 Q Now during the period February-March,  
17 1994, when you were having contact on a regular basis  
18 with the RTC, did anyone from the RTC indicate to you  
19 that they wanted Pillsbury to conduct an independent  
20 examination of the matters concerning Madison  
21 Guaranty?

22 A Did they indicate to me?

1 Q Yes.

2 Let me rephrase the question.

3 What does it mean to you to conduct an  
4 independent examination of a particular matter?

5 Let me strike that. It's a bad question.

6 I agree.

7 Pillsbury was not going to be an  
8 independent prosecutor with regard to these matters;  
9 right?

10 A That's correct.

11 Q They were not going to be an independent  
12 counsel with regard to these matters; right?

13 A That's correct.

14 Q Pillsbury was not going to be an  
15 independent inspector general with regard to these  
16 matters; right?

17 A That's correct.

18 Q Pillsbury was an outside law firm retained  
19 to provide guidance and direction to the RTC; right?

20 A I think Pillsbury was retained as outside  
21 counsel to assist the RTC in its investigation in  
22 terms of resources and legal talent.

1 Q In fact, was it your understanding that  
2 the ultimate decision as to whether to pursue civil  
3 claims with regard to Madison Guaranty would be made  
4 by Pillsbury, or by the agency?

5 A The agency had responsibility to make that  
6 decision.

7 Q Not Pillsbury?

8 A That's correct. The authority and  
9 responsibility lay with the agency.

10 Q And during the period when you worked on  
11 this matter extensively in February and March of  
12 1994, was it your impression that RTC officials had a  
13 fairly hands-on role with regard to the management of  
14 this matter?

15 A With regard to my contact with them and  
16 the matters that I was involved in, I think it is a  
17 fair statement to say they were quite hands-on.

18 Q Do you believe you were qualified to serve  
19 as lead counsel with regard to this matter?

20 A I believe I would be qualified, or would  
21 have been qualified to serve as lead counsel. I  
22 should say, Mr. Patterson is someone who has

1 considerable experience, certainly considerable  
2 experience in private practice, and has also done a  
3 considerable amount of work for the RTC.

4 In officer and director liability cases  
5 Mr. Ericson had a breadth and depth of knowledge in  
6 civil litigation.

7 Q So any of you would have been qualified to  
8 serve as lead counsel?

9 A I would say that is true.

10 Q Do you think you had sufficient capability  
11 in the Washington, D.C., office to conduct this  
12 investigation?

13 A I think we would have needed to bring in  
14 additional resources, either from California or hire  
15 them into the office. But that is typical of the way  
16 our law firm operates.

17 We frequently will staff cases by using  
18 associates from various offices because of technology  
19 and communications. Not everybody working on a  
20 particular case needs to be in a particular office,  
21 and the firm thinks of itself, I think, as a unified  
22 firm where communications go back and forth between

1 San Francisco and Washington and Los Angeles and  
2 Washington on staff matters from all offices.

3 We would not have had sufficient people in  
4 the Washington office by itself, probably, to do this  
5 entire matter.

6 Q Could you have done the entire matter  
7 between the Washington office and the San Francisco  
8 office?

9 A Certainly.

10 Q During the period February-March 1994 when  
11 Pillsbury was initially retained, was there any  
12 discussion about the advantages of having involvement  
13 in this matter by lawyers from the Washington, D.C.  
14 office?

15 A If I remember correctly, there was some  
16 general discussion about this was a matter where the  
17 client was in Washington. A lot of the documents  
18 were going to be in Washington. Some of the issues  
19 related to the agency obviously were here in  
20 Washington. So, as a consequence, there was a sense  
21 that it made good sense to have a Washington presence  
22 as part of this investigation.



1 Q In fact, am I not right that of the three  
2 offices that were potentially involved in this San  
3 Francisco-Los Angeles --

4 Was there any particular reason why the  
5 Los Angeles office had to be involved?

6 A I think primarily because of Mr.  
7 Patterson.

8 Q Was located there?

9 A He was located there.

10 He was lead counsel in this matter and had  
11 developed the relationship with the client and  
12 maintained that relationship. So that provided a  
13 basis to involve that office.

14 Q And the San Francisco office was involved  
15 for what reason?

16 A Mr. Ericson was resident in the San  
17 Francisco office. He was part of the team here, as  
18 well as the San Francisco office, and likewise had  
19 associate resources that could be available if  
20 necessary.

21 Q If you know, between February 1994 and  
22 February 1996, did Mr. Ericson or Mr. Patterson

1 conduct meetings relating to this matter in the  
2 Washington, D.C., office?

3 A I know they had several meetings in  
4 Washington at the client agency. I believe they  
5 also -- well, I know they had meetings in the  
6 Washington office. I participated in some of those  
7 meetings early on where we had meetings with Mr.  
8 Ericson and Mr. Patterson, myself, and others,  
9 subsequent to February and March.

10 If your question is: Did they have  
11 meetings where I was not present? My memory is they  
12 would come to the Washington office from time to  
13 time. They met the client agency from time to time,  
14 and it may well be that they met with the client or  
15 others in our offices during that period of time.

16 I seem to recall that that happened on  
17 occasion.

18 Q Did the client during the period February-  
19 March 1994 ever express its interest in having a  
20 Washington-based lawyer assisting them on this  
21 project?

22 A As I believe I indicated yesterday, I

1 either got a telephone call from Mr. Gabrellian, or a  
2 Voice Mail message from Mr. Gabrellian, about the  
3 engagement, the time frame on the engagement, because  
4 of the potential exploration of the statute of  
5 limitations suggested the need for immediate presence  
6 to deal with documents in the agency.

7 So I think there was a general assumption  
8 that going into the engagement, the Washington  
9 office, or a Washington office was a basic component  
10 of the engagement.

11 The agency lawyers would be interfacing  
12 here, and indeed the Washington office, for a period  
13 of time served that function.

14 Q In 1994-1995, in fact early in 1996,  
15 taking into account your other professional  
16 responsibilities, would you have had the time to have  
17 reviewed the reports your firm prepared concerning  
18 the Madison Guaranty project?

19 A Yes.

20 Q And you never indicated to anyone that you  
21 were too busy to review the reports?

22 A No.

1 Q In fact, wouldn't it be fair to say that  
2 among the various types of matters that lawyers in  
3 private practice have an opportunity to work on  
4 working on the Madison Guaranty project would be  
5 something that would be viewed as desirable?

6 A That's a matter of opinion.

7 Q From your standpoint, would you view this  
8 to be an interesting assignment?

9 MR. COLE: Now and then.

10 (Laughter.)

11 BY MR. GIUFFRA: (Resuming)

12 Q At the outset, did you view this as a  
13 potentially interesting assignment?

14 A Potentially. I was perhaps not as  
15 enamored of the idea as perhaps Mr. Ericson was, or  
16 perhaps Mr. Patterson.

17 Q With regard to the issue of interlocking  
18 transactions, was the point that you were focusing on  
19 that there might be a fraudulent transaction  
20 involving Project X, and the money might go into the  
21 Whitewater Investment in what appears to be a  
22 legitimate transaction, or if we would pick up the

1 fraudulent nature of the original transaction, if you  
2 focused too narrowly on just the Whitewater part?

3 A I think my concern that I expressed in  
4 terms of the comment -- and it was a comment -- was that  
5 you may not be conveying a full picture, an accurate  
6 picture, if you take a slice of one transaction,  
7 unless you are able to show that in the full mosaic  
8 or constellation of various transactions that might  
9 all relate to Madison.

10 As a consequence, you might not convey a  
11 completely accurate picture.

12 Q During the period February-March 1994 when  
13 you were active in this engagement, did you have  
14 communications with anyone at the RTC about witnesses  
15 that might be interviewed or deposed?

16 A We probably discussed during that period  
17 witnesses, who would be potential witnesses for each  
18 transaction, who the players would be, who the  
19 witnesses would be.

20 I think we had some discussion we  
21 indicated with regard to the 6(e) petition, who might  
22 provide some supporting predicate basis for that

1 petition as to documents and where they were.

2 I talked to a number of people at the  
3 successor bank to Madison Bank in terms of trying to  
4 identify where those records were so there would be  
5 interchange about, you know, why don't you contact  
6 the current president, or the current vice president,  
7 to see what they are doing. I would make that  
8 contact advice, what that was, and try to put it  
9 together for this petition.

10 Q At the outset of the engagement February-  
11 March 1994, did RTC officials make suggestions to  
12 Pillsbury witnesses Pillsbury might like to interview  
13 and depose?

14 A I think, as I indicated, there was  
15 probably general discussion about witnesses who would  
16 be tied to various transactions.

17 Q Did they provide you any preliminary lists  
18 of witnesses?

19 A I can't remember whether they provided it  
20 or whether we developed it as a result of  
21 conversations.

22 Q Among both RTC and Pillsbury?

1       A    Yes. I mean, there was a list of a whole  
2 range of players. But my ~~general~~ memory is that,  
3 once the statute of limitations issue was resolved by  
4 the Congress, that there was sort of a hiatus period  
5 before there was any real focus on what specific  
6 witnesses would be interviewed and deposed.

7       There was an effort to try to understand  
8 the transactions, look at the documents, and get the  
9 documents, and look at the records; and at the issue  
10 of whether any witnesses should be interviewed, and  
11 which witnesses should be interviewed may have come  
12 more precisely later on in the investigation.

13       Q    Now prior to the retention of Pillsbury in  
14 February 1994, the RTC had been conducting its own  
15 investigation as to whether they would make a civil  
16 claim without the assistance of outside counsel?

17       Is that correct?

18       A    I believe the RTC had taken a look at  
19 Madison, in the view of many banks they had taken a  
20 look at over the course of the previous two, three,  
21 or four years. So they had some documentation that  
22 they had put together I think as a result of their

1 review.

2       If I'm not mistaken, I believe they had  
3 done some assessment of this, and had generally come  
4 to a view that they had closed out a lot of things.  
5 I think they negotiated a settlement, if I remember  
6 correctly, with regard to one piece of the related  
7 litigation, and that became a subsequent issue,  
8 whether or not that was going to block or do a  
9 recovery.

10       My memory is there had been some prior RTC  
11 review of the Madison Bank matter.

12       Q    And it was your understanding in February  
13 1994 that the RTC's preliminary review indicated that  
14 there were no cost-effective civil claims that could  
15 be brought involving Madison?

16       A    That is generally my sense. At the outset  
17 I think there was a sense that the RTC had taken a  
18 preliminary look at it; that they had closed the  
19 matter.

20       They had resolved one related matter, as I  
21 said, to some kind of settlement and had generally  
22 made a determination that this was not going to be a



1 cost-effective piece of litigation, and moved on.

2 Q After the Congressional and other public  
3 pressure had decided they ought to hire the law firm?

4 A Apparently they decided they should re-  
5 open it and decided they needed outside counsel to  
6 assist in that effort.

7 Q But as of the time you were retained, the  
8 RTC had made a preliminary conclusion, or made a  
9 conclusion that there was no cost-effective civil  
10 action to be brought arising out of Madison?

11 A I believe that's the case. You may better  
12 direct that to the RTC, but I believe that is the  
13 case.

14 Q Did you make any preliminary judgments in  
15 February-March 1994 as to how the investigation --  
16 strike that.

17 After Congress enacted the extending of  
18 the statute of limitations, did you make any  
19 preliminary judgment as to how you thought the  
20 investigation should proceed going forward?

21 A I don't know that I personally made those  
22 judgments. We had discussions about how the

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1 investigation should proceed. I say "we," Mr.  
2 Ericson and I, and I think Mr. Patterson at some  
3 point later came into that, if I remember correctly.  
4 This was sort of reviewed in two segments.

5 The first was before the statute was  
6 extended there was a sense that we needed to analyze  
7 all the existing documentation, and quickly do a  
8 sufficient amount of due diligence to determine  
9 whether there was a basis to file a claim to get in  
10 ahead of the expiration of the statute. There were  
11 issues there about tolling which was raised.

12 Should we be tolling potential defendants.  
13 The extension of the statute changed the dynamics  
14 somewhat.

15 Then the discussion at least had a more  
16 intermediate term focus to is. There were questions  
17 raised about which transactions should we look at?

18 How should we look at them?

19 Should we divide them up?

20 Should we prioritize them?

21 Should we look at them piece by piece?

22 Should we then put them back together?

1 In the overall picture those were  
2 discussions that went on with the Pillsbury people as  
3 well as between the RTC and Pillsbury.

4 Then, as I indicated, in one of the pieces  
5 of this the RTC indicated that they wanted the  
6 Whitewater transaction to be examined, even though in  
7 their view it probably would not have merit, based on  
8 cost-effectiveness, but they thought because of the  
9 climate I guess in which they were operating, that  
10 that needed to be one piece of the overall  
11 examination of Madison.

12 Q Did you personally have any views as to  
13 how the investigation should proceed?

14 A I think I explained pretty well that my  
15 general sense was that it could be beneficial. You  
16 needed to parse all the potential parts of it, but I  
17 thought it might be beneficial to look at it in terms  
18 of a larger mosaic of whether there were interlocking  
19 pieces and people relationships, financial  
20 transactions, and whether or not there might be some  
21 overarching claim that you could use to pull together  
22 what may well be allegations of misconduct or

1 fraudulent conduct, or intentional conduct as the  
2 Extension Statute required.

3 Q Might that have been a way to increase the  
4 amount of damages that could be sought by the RTC,  
5 taking a broader look?

6 A I suppose if you used a RICO code, you  
7 could increase the amount of damages. The ultimate  
8 question would be, though, were there any resources  
9 available from any other players or potential  
10 defendants in such an action that would make it cost-  
11 effective?

12 As you pointed out, this was a civil  
13 investigation, not a criminal investigation.

14 Q Was there any discussion that perhaps the  
15 RTC could bring a civil RICO action arising from the  
16 Madison matter?

17 A There was some discussion of that.

18 Q Was that something you thought might be  
19 something that could be pursued?

20 A It is something I thought would be worth  
21 exploring.

22 Q Why did you believe that a civil RICO

1 action was something that might be worth exploring?

2 A For the reasons I explained. It may  
3 provide an overarching theory that would provide a  
4 consistent rationale of pulling together what  
5 standing alone might seem like isolated and disparate  
6 real estate transactions, but when viewed together as  
7 a pattern might really paint a very consistent  
8 picture of a pattern of conduct.

9 Q Plus you would get greater damages,  
10 potentially?

11 A (Nods in the affirmative.)

12 Q Were these views expressed early on by you  
13 to other attorneys at Pillsbury?

14 A We had discussions about various theories  
15 of liability, potential liability. I have already  
16 expressed those -- in meetings that we had.

17 Q To the client, as well as the partners?

18 A Probably, yes.

19 Q Do you know whether consideration was  
20 ultimately given to a civil RICO claim?

21 A What kind of "consideration" do you mean?

22 Q In any of these reports.

1 A To my knowledge, the answer is 'no.' But  
2 at least in the preliminary report I read, my memory  
3 was in there I believe the answer is that a  
4 determination probably was made sometime to look at  
5 the various transactions independently.

6 Q Did you in your conversation with Mr.  
7 Ericson in November 1994, did you raise the issue of  
8 whether consideration should be given to a civil RICO  
9 claim?

10 A I doubt it. I doubt whether I used those  
11 terms. I did discuss -- at least my view is I made  
12 some comments generally about the importance of  
13 painting a broad picture. I doubt whether I went  
14 that far, because I don't think this went through the  
15 series of liability, if I remember correctly.

16 Q But that was something you would have  
17 raised?

18 A Yes.

19 MR. GIUFFRA: I don't have any further  
20 questions. That's it. Thank you very much for your  
21 cooperation.

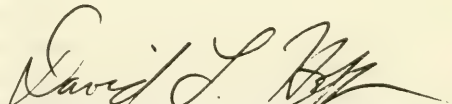
22 (Whereupon, at 4:45 p.m., Thursday, May

1 16, 1996, the deposition was adjourned.)

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4 JAY B. STEPHENS  
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I, DAVID L. HOFFMAN, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires JUNE 30, 2000

**DEPOSITION OF JAMES J. IGO  
IN RE: S. RES. 120**

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**FRIDAY, MAY 24, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of JAMES J. IGO, called for examination pursuant to notice of deposition, at 2:15 p.m. in Room 534 of the Dirksen Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.  
Majority Chief Counsel  
MICHAEL P. O'CALLAGHAN, Esq.  
Majority Associate Special Counsel  
LANCE COLE, Esq.  
Minority Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

JOHN C. BINKLEY, Esq.  
Resolution Trust Corporation  
801 Seventeenth Street, NW  
Washington, DC 20434-0001  
On behalf of the RTC.

STEVEN D. GORDON, Esq.  
Holland & Knight  
2100 Pennsylvania Avenue, NW  
Suite 400  
Washington, DC 20037  
On behalf of the Deponent.

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## PROCEEDINGS

(2:15 p.m.)

MR. O'CALLAGHAN: Why don't we get on the record.

Good afternoon, Mr. Igo. My name is Michael O'Callaghan, I'm Associate Special Counsel for the Special Committee.

With me is a member of the minority, David Luna.

This deposition today is being conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administrated by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., and other related matters.

We'll ask you a series of questions today and ask you to testify under oath. If you don't understand a question, let us know, we'll be happy to rephrase it. If you need a break at any time, also let us know.

The Reporter will prepare a record of

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4

questions and answers and the deposition will be treated as Committee confidential. You'll also have an opportunity to come to the Senate to read the transcript or our deposition and make any notes of corrections of questions I will ask you.

You may be represented by counsel today.

Are you represented by counsel?

MR. IGO: Yes.

MR. O'CALLAGHAN: Could your counsel please state your name?

MR. GORDON: Steven Gordon of the law firm of Holland & Knight. I represent Mr. Igo.

MR. BINKLEY: I'm Jack Binkley, John C. Binkley with the FDIC.

MR. O'CALLAGHAN: Objections to the forms of questions will be noted for the record. Counsel may object on grounds of privilege or relevance and the Committee Chairman may rule on objections where the witnesses refuses to answer a question.

Could you please swear the witness. Whereupon,

JAMES J. IGO



1 was called as a witness herein, and having been first  
2 duly sworn, was examined and testified as follows:

3 EXAMINATION

4 BY MR. O'CALLAGHAN:

5 Q Please state and spell your full name for  
6 the record.

7 A My name is James J. Igo, I-G-O.

8 Q Did you speak with anyone other than your  
9 counsel prior to this deposition about the  
10 deposition?

11 A No. I told my boss and his boss that I  
12 was going to be deposed, and I told a few other  
13 people that I was going to be deposed.

14 Q Were these people at work, or family, or  
15 friends?

16 A They were mostly at work, and I told Mark  
17 Gabrellian I was going to be deposed. I had called  
18 him the night before the hearing.

19 Q Is this last week?

20 A Yes, I think it was Thursday night, to see  
21 if he had cable. He didn't. I told him I'd get him  
22 a tape and talk to him afterward.

---

6

1 Q Did you have any discussions of substance  
2 with him about the anticipated subject of the  
3 deposition?

4 A No.

5 Q Did you speak to anyone else?

6 A No.

7 Q What did you do to prepare for the  
8 deposition today?

9 A I didn't do anything.

10 Q You didn't review any documents?

11 A No.

12  
13

14 Q What's your present business address?

15 A 1717 H Street, 6th Floor, to be 5th Floor  
16 next week, Washington, D.C. 20036.

17 Q Who do you work for?

18 A The FDIC Legal Division.

19 Q What is your present position?

20 A Counsel in the Professional Liability  
21 Section.

22 Q Could you review for me what your

1 employment position was between February 1994 and  
2 February 1996?

3 A From February '94 to December '95, I was  
4 the counsel with the RTC Legal Division, Professional  
5 Liability Section. When the RTC was returned to the  
6 FDIC, I kept the same position, but the FDIC Legal  
7 Division.

8 Q What was your position?

9 A Counsel.

10 Q Did you supervise anyone in that position?

11 A No. We tended to share paralegals and  
12 secretaries, but aside from that, no attorneys.

13 Q Who did you report to during that time?

14 A I reported to David Eisenstein who was my  
15 direct supervisor.

16 Q Anyone else?

17 A Well I assume on this project I reported  
18 to Mark Gabrellian.

19 Q When you refer to "this project"?

20 A The Madison Guaranty investigation. But  
21 David was and still is my supervisor for all other  
22 matters.

1 Q Did you report to him on this matter?

2 A No. He had recused himself earlier.

3 Q How long did you work on the Madison  
4 Guaranty matter, what time period?

5 A From some time early in January '94 until  
6 now.

7 Q What were your responsibilities and  
8 functions with regard to the Madison Guaranty  
9 investigation?

10 A Mainly I was asked to work with Bruce  
11 Ericson of Pillsbury, Madison & Sutro, as Bruce was  
12 preparing the Whitewater report.

13 Later I was asked to work with Bruce as he  
14 put together the Rose Law Firm report.

15 I had other duties as assigned.

16 I worked on trying to enforce a subpoena  
17 against Governor Tucker in the Federal District Court  
18 of Arkansas, and just other duties as assigned.

19 Q Did you play any role in the selection of  
20 outside counsel to work on this matter?

21 A A qualified no to that. Mark Gabrellian  
22 dropped by my office some time I think in January of

1 '94 and asked me for recommendations about outside  
2 counsel. He wanted a large firm that knew a lot  
3 about RTC's case work cases, and he wanted one that  
4 had a D.C. office.

5 I started to think, and he took off and he  
6 said, well, think about it, and get back to me.

7 Then I ran into him in the hall a few days  
8 later and he said, do you have any recommendations,  
9 and I recommended Baker & Botts because they had a  
10 D.C. office, and also I'd worked with their Dallas  
11 office, thought that Dallas was fairly close to  
12 Arkansas.

13 I recommended Dewey Ballantine because I'd  
14 worked with Dewey Ballantine out of L.A. and knew  
15 they had a New York office, and I also knew they had  
16 a D.C. office.

17 And I think, but I'm not positive, that I  
18 recommended Graham & James, but I think Mark said no  
19 to Graham & James because they had too much work and  
20 they were already capped.

21 Q So he'd already looked into other firms at  
22 that point?

---

10

1 A I don't know. I just gave him my  
2 recommendation.

3 Q Did he look into Graham & James?

4 A It may have been. There was a policy that  
5 over a certain amount, either a calendar year or  
6 rolling 12-month period, if you have too much in  
7 payments, you can't get any more work.

8 I think that's what he meant or that he  
9 knew that people he supervised were using them a lot  
10 or something. I don't know, I can't remember  
11 exactly.

12 Q How did it come to be that the RTC decided  
13 that they needed to hire outside counsel to work on  
14 the Madison matter?

15 A We hire outside counsel for virtually all  
16 professional liability investigations and litigation.  
17 I should say the RTC does.

18 I think the FDIC does it in house.

19 Q Had the RTC already conducted an  
20 investigation in this matter?

21 A Yes.

22 There had been an investigation and there

1 had been some litigation after the bank had closed in  
2 1989.

3 EXAMINATION

4 BY MR. GIUFFRA:

5 Q Prior to the time when you decided to  
6 retain outside counsel in the Madison matter, had the  
7 RTC internally conducted an investigation as to  
8 whether there were cost effective civil claims that  
9 might be followed up?

10 A No, I don't think so. Not that I'm aware  
11 of. The selection of outside counsel was pretty  
12 early on. I mean, it was as the documents were still  
13 coming in from various offices. I'm not sure  
14 exactly, but I would think some time mid-January or  
15 something, so, no, there hadn't been.

16 Q As of mid-January 1994, am I not correct,  
17 the statute of limitations was going to run at the  
18 end of February 1994?

19 A I believe that's right.

20 Q So is it your testimony that a month and a  
21 half to run on the statute of limitations, the RTC  
22 had not conducted any internal investigations as to

---

12

1 whether there might be cost effective civil actions  
2 brought against parties arising out of the matter of  
3 Madison Guaranty?

4 A We were looking at this question at the  
5 same time and we were getting documents in at the  
6 same time and from OTS and commercial litigation  
7 documents and trying to look at what parties had not  
8 been released or had not gone bankrupt and we were  
9 looking some transactions where we had documents to  
10 see if we could determine by the statute of  
11 limitations deadline whether or not there were some  
12 that needed to be pursued.

13 Q Who at the RTC participated in the process  
14 prior to the retention of outside counsel?

15 A I was assigned to work on it. I believe  
16 April Breslow was, Terry Arbit, Mark Gabrellian, Tom  
17 Hines and I think that's all the people I remember  
18 meeting with.

19 MR. GORDON: Mr. Giuffra, I just want to  
20 object and ask you whether you're going to be  
21 conducting this line of inquiry. I just want to make  
22 sure whether Mike or you will be asking the questions



1 for the majority?

2 MR. GIUFFRA: We'll probably follow the  
3 same practice that Mr. Ben-Veniste followed at the  
4 deposition of Jay Stephens.

5 MR. GORDON: I just wanted to be clear.

6 MR. GIUFFRA: I'm not going to stay for  
7 the whole deposition.

8 (Readback.)

9 BY MR. GIUFFRA:

10 Q Prior to mid-January, 1994, had there been  
11 any discussions amongst persons of the RTC about  
12 whether or not cost effective civil claims arising  
13 from the failure of Madison Guaranty?

14 A Not that I know of. Not that I recall,  
15 anything specifically about cost effective.

16 Q Had there been any discussion -- take out  
17 the words "cost effective" -- any discussion of civil  
18 claims generally being brought against persons  
19 arising from the failure of Madison Guaranty?

20 A Yes. I was brought into this some time  
21 after the beginning of January 1993 so in that period  
22 there.

---

14

1 Q You mean '94?

2 A Yes, '94. It was '94, yes, January '94.  
3 I can't remember how it got started. I mean, the  
4 first thing I remember is a meeting with Mark  
5 Gabrellian, and he said we're going to take a look at  
6 Madison Guaranty and see if there were any claims  
7 that should have been brought before that weren't  
8 brought, and that can still be brought now. We're  
9 going to take a look at that.

10 And we started to gather the documents and  
11 look at it. At the same time, within a week or two,  
12 I think that they had either hired Pillsbury or  
13 recommended that they be hired.

14 Q So as far as you know, there were no  
15 internal discussions at the RTC prior to the  
16 retention of Pillsbury in mid-January?

17 A No. Regarding cost effectiveness, no.

18 Q Or anything about whether there might be a  
19 possible civil suit against anybody?

20 A We were looking to try and discover  
21 whether there was a civil suit against anybody.

22 Q Were there any preliminary conclusions

1 that you had drawn, the RTC had drawn?

2 A I don't think there were any conclusions  
3 drawn as yet. There were certain people identified  
4 who had gone bankrupt. We were still looking at the  
5 files, but we had not drawn any preliminary  
6 conclusions, and we felt like we were going to use  
7 every minute to the end of the statute of  
8 limitations. There was that much stuff to look at  
9 and the stuff hadn't arrived.

10 Q Do you know why the work was left until  
11 six weeks before the statute of limitations was to  
12 expire?

13 A No, I don't know anything about prior to  
14 January 5th or so, or whenever it was, early January.

15 Q That was when you first got involved?

16 A Right.

17 MR. GIUFFRA: Go ahead.

18 EXAMINATION (Continued)

19 BY MR. O'CALLAGHAN:

20 Q Was there a process in place at the RTC  
21 for choosing outside counsel?

22 A I believe so. There was some sort of

1 guidelines. And the person in our office, I have  
2 only selected outside counsel twice, or only did it  
3 twice at the RTC. Usually, I just inherited them.

4 But when you do that, there's a person  
5 named Myra Marshall you would go to because the  
6 guidelines were always changing. You would send out  
7 letters to request some sort of a bid package in  
8 quotes and you would ask for certain information.  
9 You'd need a Byrd Amendment Certificate from them,  
10 and what you needed, the sort of information you  
11 needed to present it to the Legal Services Committee  
12 was sort of a moving target.

13 But, yes, there was sort of a standard  
14 process.

15 Q With regard to the retention of an outside  
16 counsel to work on the Madison matter, how were the  
17 firms identified to send out bid packages to?

18 A Outside of being asked to give some  
19 recommendations to Mark Gabrellian, I don't know what  
20 bid process was used.

21 Q Were the normal procedures followed with  
22 regard to retention of the outside counsel for this

1 matter?

2 A I don't know.

3 Q Did you play any role in choosing the firm  
4 other than the questions Mr. Gabrellian asked you?

5 A No. The next time I heard about it, Mark  
6 advised me that Pillsbury Madison had been hired.

7 Q How did that come about?

8 A I ran into him in the hall and he told me  
9 Pillsbury Madison had been hired.

10 Q How soon after that, was that after he had  
11 asked you for recommendations for firms to engage?

12 A I would say a week maybe.

13 Q Who at the RTC made the determination to  
14 hire Pillsbury, Madison & Sutro.

15 A I think Mark made the recommendation. As  
16 I understand the way it worked, the Legal Services  
17 Committee has to approve the hiring of counsel.

18 Q Who served on that at the time?

19 A The only person that I know at the time  
20 was Gary Kuiper, K-U-I-P-E-R. I think there was  
21 another woman named Arleas, A-R-L-E-A-S Upton Kea,  
22 K-E-A, but there were about ten people on the

1 Committee. Those were the only two I recognize.

2 Q Those are RTC personnel?

3 A They were, yes.

4 Q What's your understanding as to why  
5 Pillsbury, Madison & Sutro was hired?

6 A At the time, Mark told me they were hired.  
7 He told me that Pillsbury Madison had worked on the  
8 case involving Symington, Governor Symington, the  
9 Governor of Arizona, and he said there were two  
10 partners who'd worked on the case and they'd both  
11 done a great job, and it had become fairly political,  
12 and they had tentatively gotten a big settlement.  
13 And John Stewart, S-T-E-W-A-R-T, who worked for Mark,  
14 thought the world of them.

15 Q What two partners were they?

16 A I'm not sure he said at that time that it  
17 was Patterson and Ericson. I'm not sure that he  
18 mentioned the names. And at the time, they wouldn't  
19 have meant anything to me.

20 Q Did he mention at any time the fact that  
21 Jay Stephens was with the Pillsbury Madison firm?

22 A Not at that time, no.

1 Q With regard to the bid that the firm  
2 submitted to the RTC, did you identify which partners  
3 from Pillsbury Madison would be working on the case?

4 A I've seen it since then. But I saw it in  
5 connection with the production to the House of  
6 Representatives or the Senate. I had not seen it at  
7 that time. I may have seen it before that for some  
8 reason to look into the file, but I had not seen it  
9 for several months after the firm had been hired.

10 Q With regard to the bid that Pillsbury  
11 Madison submitted, was the partners that were  
12 identified as people who were going to work on the  
13 case, was that something that was considered as part  
14 of the proposal?

15 A I don't know.

16 Q When did you first hear the name Jay  
17 Stephens in connection with this matter?

18 A I think shortly after this conversation  
19 with Mark. I believe I asked him whether Pillsbury  
20 had a D.C. office, because I'd never heard of them  
21 having a D.C. office. And I think he said, yes, they  
22 have a D.C. office and Jay Stephens works in the D.C.

---

20

1 office.

2 Q Were you familiar with Jay Stephens at the  
3 time?

4 A Yes. I said, Jay Stephens who prosecuted  
5 Marion Barry, and Mark said, yes.

6 Q Other than understanding Jay Stephens  
7 worked there, did he make any comments about Mr.  
8 Stephens?

9 A No, he didn't.

10 Q Did you have any reaction to that after he  
11 told you that?

12 A I mean, I knew who he was, and I was born  
13 in Washington, and Jay Stephens has been around a  
14 long time, so I thought that was kind of neat.

15 Q So you thought it was good to have him on  
16 board as part of the team?

17 A Yes, I guess. I didn't have any big  
18 thought about it one way or another. He was just  
19 telling me that he worked in the D.C. office.

20 Q Did he mention any other people in the  
21 D.C. office for Pillsbury Madison?

22 A No.



1 Q Was there ever any discussion there about  
2 having Jay Stephens work on this matter was something  
3 that would be favorable for the work that was being  
4 done?

5 A No.

6 BY MR. GIUFFRA:

7 Q In February 1994, Pillsbury starts to do  
8 the work on this matter, correct?

9 A I'm not sure when they first showed up at  
10 the office. It could have been late January, it  
11 could have been early February. I don't remember.

12 Q Do you recall Mr. Stephens attending the  
13 initial meeting?

14 A I don't know when the initial meeting was.  
15 I did see him in Mark's office with Chuck and  
16 possibly Bruce, but I sort of came as that meeting  
17 appeared to be breaking up. That was in late January  
18 or early February.

19 Q You understood that Mr. Stephens had been  
20 appointed by President Reagan as U.S. Attorney?

21 A No. I don't think I knew that. I mean, I  
22 didn't know when Jay had been made U.S. Attorney.

---

1 Q Were you aware that he was Republican?

2 A I don't think so.

3 (Pause.)

4 Q Did there come a time --

5 Strike that.

6 At the outset of the engagement, did you  
7 ever have any discussion with anyone in the RTC about  
8 what role Mr. Stephens would play in connection with  
9 this investigation?

10 A I don't recall any discussion of what role  
11 Jay was going to play.

12 Q What was your understanding as to which  
13 Pillsbury partners would work on this investigation  
14 for the RTC?

15 A From what Mark had said, I assumed it was  
16 going to be Chuck Patterson and Bruce Ericson, from  
17 the initial discussion. When Jay showed up at the  
18 offices, and I was introduced to him, along with  
19 Chuck and Bruce, I thought he'd be involved in some  
20 way.

21 Q Did you ever have any discussions with  
22 anyone at the RTC at any time about the role that Jay

1 Stephens would or would not play in connection with  
2 the Madison matter?

3 A Yes, I did. The only time that I recall  
4 that happening is somewhat later after the statute of  
5 limitations had been extended and some period of time  
6 had gone by. I don't remember when exactly, but I  
7 would say some time in March, maybe late March.

8 Q Approximately at the same time as the news  
9 accounts discussing the fact that Mr. Stephens had  
10 been retained by the RTC to handle the Madison  
11 matter?

12 A No. I think it was after that.

13 Q I was just trying to place it in time.  
14 Those news reports were approximately the third week  
15 of March.

16 A I don't remember, but that's very  
17 consistent with my memory. Anyway it was after that  
18 and Mark had come to me and we had had a preliminary  
19 discussion about who in the office was going to do  
20 what work. Who was going to work on what  
21 transactions in the office.

22 Q In the office, is that at Pillsbury?

---

1 A No, no, within the RTC.

2 Was I going to work on Castle Grande, was  
3 I going to work on something else, what was Terry  
4 going to do. By that time, I think Melinda Meador,  
5 M-E-A-D-O-R, was involved in the investigation and by  
6 t time I think April Breslow was out of it.

7 But anyway, --

8 Q Do you know when Ms. Breslow's role --  
9 Strike that.

10 Do you know when Ms. Breslow was quote  
11 unquote out of it?

12 A I think she recused herself after the  
13 publicity about the Jean Lewis.

14 Q The tape conversation?

15 A Yes.

16 Anyway, around the third week of March,  
17 Mark came to me and said, you're going to work on the  
18 Whitewater report or investigation with Bruce  
19 Ericson. I don't remember saying anything to him,  
20 but I remember I may have said or acted a little  
21 quizzical because I thought that I'd be working with  
22 Patterson on it. And Mark said, I talked to Chuck

1 and Chuck thinks that Bruce is the best writer and  
2 has the best background in financial institution law,  
3 and John Stewart thinks Bruce is great. Chuck is  
4 going to handle the rest of the transaction stuff in  
5 Los Angeles.

6 Then I specifically said, what about Jay,  
7 and he said Jay's going to continue to be involved.  
8 Jay's going to work with Terry on 6(e) matters and  
9 Jay is going to work with Chuck.

10 Q On the part of the investigation Chuck  
11 would be handling?

12 A That's what I understood.

13 Q In late March, 1994, what was your  
14 understanding as to the part of the transactions --  
15 Strike that.

16 In late March, 1994, what transactions did  
17 you understand Mr. Patterson was going to be looking  
18 into for the RTC?

19 A I'm not sure I can remember them all but  
20 Castle Grande, 1308 Main Street, Campobello, Roland  
21 Manor, Castle Sewer & Water, which were connected to  
22 Castle Grande, Pembroke Manor. I'm not sure what

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1 else.

2 Q So Gabrellian told you that Stephens would  
3 work with Patterson in investigating transactions?

4 A He didn't specify. He said he was going  
5 to work with Chuck.

6 Q But Chuck handled those transactions which  
7 he specified?

8 A I think Chuck was going to handle  
9 everything, the balance.

10 Q Everything but Whitewater?

11 A Yes.

12 Q Was there any discussion in March 1994 of  
13 the Rose Law Firm?

14 A No, not specifically.

15 Q When did the Rose Law Firm become the  
16 subject of investigation?

17 A I think they were a subject of  
18 investigation as any work turned up that they did per  
19 transaction, so in the Whitewater investigation, as  
20 Whitewater continued to be defined, the work they did  
21 on the Savings & Loan Commission applications,  
22 preferred stock, that was looked at starting right

1 away by Bruce or shortly after late March, that was  
2 understood to be part of his duties. I mean, I'm not  
3 sure. I don't know anything about the Castle Grande  
4 investigation but as they looked into that, if they  
5 turned up anything Rose-related there, they were sort  
6 of looking at that.

7 And it was some time in mid-1995 that they  
8 decided that it was too scattered and that there  
9 should be one report.

10 Q What do you mean they decided?

11 A Well, I was told by Mark Gabrellian. He  
12 had decided or he and Chuck had decided. I can't  
13 remember exactly.

14 Q It was a collaborative decision between  
15 someone at the RTC and someone at the Pillsbury firm  
16 that they were working on possible claims against the  
17 Rose Law Firm?

18 A I'm not sure, well, no. We were already  
19 looking into claims against the Rose Law Firm. It  
20 was I believe a collaborative decision to have a  
21 separate report on the Rose Law Firm.

22 I also should point out that there was an

1 FDIC IG investigation going on, an RTC IG  
2 investigation going on about conflicts of interest  
3 and over billing.

4 Q The RTC IG report came out August 1995?

5 A I don't remember exactly when it came out.

6 Q Do you recall the news accounts that were  
7 publicized in March 1994 about the fact that Stephens  
8 had been retained by the RTC to look at Madison?

9 A Yes.

10 Q Did you ever discuss those news accounts?

11 A Yes.

12 Q Who did you discuss those news accounts  
13 with?

14 A Well, I talked to Mark Gabrellian.

15 Q Anyone else?

16 A It came up in a meeting with Mark and  
17 Ellen and Andy and Melinda Meador.

18 Q Just for the record, Ellen Kulka is --

19 A She was the general counsel.

20 Q Did you have any dealings with Ellen  
21 Kulka?

22 A Yes.



1 Q Did you report to Ellen Kulka?

2 A Indirectly through four layers of  
3 supervision, yes.

4 Q Did you have any related conversations  
5 with Ellen Kulka?

6 A Yes.

7 Q Did you discuss the accounts?

8 A Yes.

9 Q What happened at this discussion?

10 A The discussion, what I recall is that  
11 Ellen said, referring to the news accounts between,  
12 as I recall, Stephanopoulos wanting to have Jay  
13 removed and then a lot of press accounts about the  
14 retention of Jay Stephens specifically for this  
15 matter.

16 I remember her saying, this is crazy. We  
17 did not hire Jay Stephens, we hired the law firm, and  
18 she sort of leaned back and looked at the rest of the  
19 table and said, right, right? And looked around.

20 We talked for awhile and I remember also  
21 saying about Stephanopoulos what on earth could he  
22 have been thinking about. There was some other

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1 general discussion. I can't remember anything else  
2 specifically being said, but I remember at some point  
3 in the conversation or discussion she said, well, we  
4 keep doing just exactly what we have been doing.

5 And that's all I remember about that  
6 conversation. I don't remember anybody else saying  
7 anything.

8 Q Do you remember any other conversation you  
9 might have had with anyone at the RTC about the news  
10 accounts that appeared in March 1994 concerning the  
11 retention of the Pillsbury firm by the RTC?

12 A No. I may have talked to Mark Gabrellian  
13 about it. But just to sort of say, this is kind of  
14 crazy, or something. I do not remember any specific  
15 discussions.

16 Q Do you know whether anyone at the RTC was  
17 concerned about the fact that there had been this  
18 publicity surrounding the retention of the Pillsbury  
19 firm by RTC?

20 A No, I don't think we were concerned.

21 Q Why were you not concerned?

22 A Because our position was we had hired the

1 law firm, not any individual attorney, and nothing in  
2 the news was going to make us do anything different  
3 than we planned to do or were doing.

4 Q You would agree that as of March 1994, the  
5 RTC had come in for some public criticism for its  
6 handling of the Madison matter?

7 A I don't recall anything specific, but I'm  
8 sure there were some questions in the press about it,  
9 yes.

10 Q Did you ever discuss with anyone at the  
11 RTC the fact that there had been press accounts, news  
12 accounts containing critical statements about the RTC  
13 in regard to the Madison matter?

14 A I don't recall anything specific. Maybe  
15 you could clarify for me. Do you mean the prior  
16 handling of the investigation of Madison Guaranty and  
17 the close out of the investigation in 1992?

18 Q Anything.

19 A I don't recall any specific discussions  
20 about the news. I know there had been news reports  
21 but I don't recall any specific discussions about  
22 them.

1 BY MR. O'CALLAGHAN:

2 Q During the meeting that occurred with Ms.  
3 Kulka, Mr. Gabrellian and others, did Ms. Kulka  
4 relate to you that anyone from the Administration had  
5 approached her with regard to Mr. Stephens' role in  
6 the project, the Madison project?

7 A No, absolutely not.

8 Q Have you heard whether anyone from the  
9 Administration approached anyone at the RTC with  
10 regard to Mr. Stephens' participation in the Madison  
11 matter?

12 A I'm not aware that anyone from the  
13 Administration ever approached anybody at the RTC  
14 during the entire time that I was involved with the  
15 project.

16 Q I already asked you about the retention of  
17 the Pillsbury firm at the outset of the project.

18 A Could I clarify one answer?

19 Q Certainly. Whenever you want to clarify  
20 an answer, please feel free.

21 A The only other discussion I had about Jay  
22 Stephens was with John Stewart. His office was right

1 behind my secretary and my secretary still typed for  
2 me so I'd get by there fairly often, and this was at  
3 that time. We've all moved since then, but as I  
4 passed down there a few times, John Stewart said to  
5 me, jokingly, look, you can have Bruce and Chuck, but  
6 you cannot have Jay, I need him on the Trust Bank  
7 case.

8 And it happened at least twice because the  
9 second time he said it, I sort of laughed it off and  
10 he said no, really, I'm serious, and I could see from  
11 his face that he was serious. He said the thing is  
12 really hot and I do need him to work on this.

13 Q That was another case?

14 A The Trust Bank case. There was a failure  
15 out in Virginia and I believe it was eventually  
16 dismissed. I'm not sure if it was appealed but it  
17 was pending or it was about to be filed at the time I  
18 talked to John Stewart. It was another S&L case.

19 And I asked John, I said, well you work  
20 for Mark, don't you?

21 And he said, yes.

22 And I said, have you talked to Mark about

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1 this?

2 And he said, yes.

3 And I said, well, if Mark supervises you  
4 and you supervise the Trust Bank case, he won't mess  
5 it up.

6 With that, that is the only discussion I  
7 ever had about it.

8 Q When did that discussion occur?

9 A Shortly after we had hired Pillsbury, I  
10 mean, within a week or so of Mark saying we were  
11 going to hire them.

12 Q So this was in early February, in February  
13 or early March?

14 A I think it would have been mid-late  
15 February, somewhere in there.

16 Q Do you recall whether it was before the  
17 press accounts had started about Jay Stephens?

18 A It was before.

19 Q Did Mr. Stewart tell you that Mr.  
20 Gabrellian had told him that Stephens' role would be  
21 limited with regard to the Madison matter?

22 A I never had any discussion about that with

1 Mark Gabrellian, and I don't know, you know, what was  
2 going on with the Trust Bank case, but it's a matter  
3 of public record about why it was filed, when it was  
4 dismissed, and plenty of time for filing an appeal if  
5 there was one filed, and whatever.

6 No, I never had any discussion about the  
7 Trust Bank case with Mark Gabrellian whatsoever.

8 Q The question was meant to --

9 A I'm sorry.

10 Q -- it may not have been clear, with regard  
11 to Mr. Stephens' role working on the Madison matter,  
12 whether or not that was deliberately diminished by  
13 people at the RTC if they requested that he not work  
14 on it?

15 A I never had -- I'm sorry.

16 Q To your knowledge, with Mr. Gabrellian or  
17 Mr. Stewart?

18 A I never had any discussion about Jay's  
19 workload outside of those two conversations with John  
20 Stewart. I don't know how much time Jay put in on  
21 the Trust Bank case. I don't know whether that  
22 affected Mark's thinking outside of John Stewart

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1 telling me he had talked to Mark about it. I have no  
2 personal knowledge that they had a discussion.

3 Q You never approached Mr. Gabrellian about  
4 Mr. Stewart's statements?

5 A I never mentioned it to him, no. I don't  
6 recall mentioning it to him. I may have said  
7 something, but I don't recall that.

8 Q Had you wanted to utilize Mr. Stephens'  
9 services?

10 A I never met him and I didn't even know he  
11 was in private practice. I didn't know Pillsbury,  
12 Madison & Sutro had a D.C. office.

13 Q This was after they'd been hired by the  
14 RTC, right?

15 A No. I didn't feel it was up to me to tell  
16 Mark what lawyers we should use in the case.

17 Q What I'm trying to get at is, you had a  
18 conversation with Mr. Stewart?

19 A Yes.

20 Q When he said you can have Chuck Patterson,  
21 you can have Bruce Ericson working on this, but I  
22 want to work with Jay Stephens on the Trust Bank case



1 I'm working on, presumably that's after Pillsbury,  
2 Madison had been hired by the RTC.

3 Is that right?

4 A Right.

5 Q You had met Mr. Stephens in the early  
6 meeting?

7 A Right.

8 Q And you knew he was working on the case,  
9 on the Madison case?

10 A I knew he was involved, yes.

11 Q Had you intended to do work with Mr.  
12 Stephens at that point?

13 A I didn't have any intentions of any sort.  
14 I mean, I did what I was assigned to do. That's it.

15 Q Would you thought it would have been  
16 helpful to work with Mr. Stephens on the case?

17 A I don't know. I've never worked with him.  
18 I don't know. I've seen him in the newspapers for  
19 many, many years. I thought he worked in the U.S.  
20 Attorney's Office prior to being U.S. Attorney. But  
21 I have never seen any of his work product. I  
22 wouldn't have known then, I don't know now how useful

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1 that would have been.

2 Q So just at that time, did you have an  
3 impression of what his reputation was, whether he was  
4 a competent lawyer?

5 A Well, my impression from reading the  
6 newspaper over the years was he was a very  
7 hardworking, and very effective U.S. Attorney. That  
8 was the only impression I had. I hadn't followed his  
9 career closely or anything.

10 Q Mr. Stewarts' comments indicate to you  
11 thought he had a high impression of Mr. Stephens'  
12 abilities. Would that be fair to say?

13 A No, I don't think so. I don't think that  
14 would be fair to say. I think it would be fair to  
15 say that he said, I need Jay on this Trust Bank  
16 thing, it's exploding, it's really hot. I've got to  
17 meet some sort of a deadline.

18 He did not, he never told me, one way or  
19 the other, what Jay's work product was like. He did  
20 tell me that Chuck and Bruce did a wonderful job on  
21 the Southwestern case or the Symington case.

22 Q Had they had any involvement in the Trust

1 Bank case with Mr. Stewart?

2 A I don't know.

3 Q So even though you knew he had a high  
4 opinion of Mr. Patterson's and Mr. Ericson's work, he  
5 still told you that he wanted to use Stephens for the  
6 Trust Bank case?

7 A Well, --

8 MR. GORDON: If I may, I think your  
9 question is assuming that Mr. Stewart was in a  
10 position to say he wanted to work with Stephens. I'm  
11 not sure that that's correct. It's my understanding,  
12 and please let's have Jim clear it up for us, that  
13 there'd already been an assignment made.

14 THE WITNESS: I think Trust Bank was out  
15 of McLean, Virginia. My assumption, when John  
16 Stewart said I need him on this case, is that the  
17 Pillsbury law firm had been hired and Jay Stephens  
18 was the local partner, and the local partner, I mean,  
19 he was going to be working on that case. I don't  
20 know what discussions he had had about that with Mark  
21 Gabrellian.

22 BY MR. O'CALLAGHAN:

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1 Q Okay. The question was he identified the  
2 three partners who were working on the Madison  
3 matter; Mr. Patterson, Mr. Ericson, and Mr. Stephens,  
4 and he told you he wanted to work with Mr. Stephens  
5 on the Trust Bank case because he needed him for  
6 that?

7 A I think he told me that he was working  
8 with him, but he needed all of his time. That was  
9 the sense he conveyed, he needed all of his attention  
10 on the Trust Bank case.

11 Q Did you have any interaction with Mr.  
12 Stephens over the course of the project for the  
13 Madison project?

14 A I talked to him maybe three or four times.  
15 I met him at the meeting I described earlier, that I  
16 think was the initial meeting where Chuck Patterson,  
17 Bruce Ericson, Jay Stephens and an associate named Ed  
18 Kolto, and possibly some other associates from the  
19 California offices of Pillsbury were in the RTC  
20 offices on the tenth floor.

21 I showed Bruce Ericson and Ed Kolto the  
22 attorney's office where we were storing OTS records

1 and commercial litigation files and other files that  
2 were coming in from all over the place, explained the  
3 index that showed all the documents in the OTS files,  
4 and which ones I selected.

5 I explained to them how the commercial  
6 files were set up and then shortly thereafter they  
7 left and Jay Stephens showed up, and I went through  
8 the same thing with Terry Arbit and I went through  
9 the same thing with them and I asked both Bruce and  
10 then later Jay, I said how are we going to handle  
11 this?

12 Where are we going to put these documents?

13 On two separate occasions, I asked Bruce,  
14 he said, I don't know, I'll have to check with Chuck.

15 When I asked Jay, he said, I don't know,  
16 I'll have to check with Chuck.

17 My concern was that this attorney's office  
18 was already knee-deep in documents and an attorney  
19 was due to show up shortly and we didn't have any  
20 space left, so I didn't know what we were going to do  
21 with him.

22 Now that was the first time.

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1 Q I'll just hold you there for a minute. So  
2 we'll go in progression through the different  
3 conversations.

4 During that first meeting, was there  
5 discussion of what role each of the Pillsbury,  
6 Madison partners were going to play?

7 A No. I was not there during the meeting.  
8 I showed up as it appeared to be breaking up, and I'm  
9 not sure that there was any discussion at that  
10 meeting about that. It had been the first meeting.  
11 I'm not sure that they would have gotten into that,  
12 but I don't know.

13 Q Have you ever learned, do you know or have  
14 you ever learned that Mr. Stephens was initially  
15 slated to work on the Whitewater matter with other  
16 people?

17 A No, I never heard that.

18 Q You never saw any of the case plans that  
19 were ever submitted?

20 A No, I absolutely never heard that.

21 Q Did you review all the case plans that  
22 were submitted by PMS?

1 A No, I didn't. I don't recall reviewing  
2 any of them.

3 Q So after the first meeting which you just  
4 discussed, where you showed everybody the OTS  
5 documents, what was the next contact or communication  
6 with Mr. Stephens?

7 A The next time I saw him, he was with Terry  
8 Arbit. It was in the same time period. It may have  
9 been a few weeks later. I'm not sure what they were  
10 working on but we stopped in the hall in Mark's  
11 office and chatted for a few minutes.

12 I don't remember any specific work-related  
13 topic being discussed. I just ran into him in the  
14 hall.

15 Q How about the next time?

16 A The next time, I think again I saw him  
17 with Terry Arbit and I think Terry and Jay were  
18 meeting, talking about trying to get Jay to help us  
19 select a firm of forensic accountants, some  
20 accounting experts.

21 Q About what time did that conversation  
22 occur?

1 A You mean by date?

2 Q Yes.

3 A It would have been within a week or so  
4 after the first time I saw Jay with Terry.

5 Q This is early on in the process?

6 A Yes, very early in the investigation.

7 Q Was Mr. Stephens doing a lot of work on  
8 the project during the early phases of it?

9 A I don't know. I was doing work as  
10 assigned after the statute of limitations was  
11 extended. I was not running around doing a lot. I  
12 had a lot of other cases to work on.

13 Q I just want to get a sense of your general  
14 impression at the outset of the case, what your  
15 impressions were with regard to the level of  
16 participation that was anticipated for Mr. Patterson,  
17 Mr. Ericson and Mr. Stephens.

18 Was it your impression that they would all  
19 be working equally on it? Or whether one person was  
20 taking the lead? Or how it was going to be divided  
21 up?

22 A My impression was that Chuck Patterson was



1 the lead lawyer. My impression was that any decision  
2 that was going to be made on this case was going to  
3 be made by Patterson. I mean, it was very clear when  
4 we saw these three attorneys together that Mr.  
5 Patterson was in charge.

6 Q He was the senior attorney?

7 A Absolutely. They would not have made a  
8 move without checking with Patterson, especially at  
9 the beginning of this case.

10 Q How about with regard to the amount of  
11 work done in investigation and writing the reports?

12 A That was up to Patterson. I mean, it was  
13 clear that he was in total control of what that law  
14 firm was going to do.

15 Q Did they give you any impression, like Mr.  
16 Ericson's going to work on one half of this, Mr.  
17 Stephens' going to work on half?

18 A No. When I first saw them, they had no  
19 idea of the volume. Well, my impression was they had  
20 no idea of the volume of material that we already had  
21 in our offices that we were expecting to arise that  
22 existed out in the field offices, which existed in

1 the loan files that had been sold to third parties,  
2 that existed that they came to me to talk about the  
3 general problem, then they were going to go back to  
4 talk about that sort of thing. That's my impression,  
5 nobody told me that.

6 Q So even at the time they were hired, they  
7 didn't have a good grasp of the volume of documents  
8 that were involved?

9 A When they were hired, the RTC didn't have  
10 a good grasp of how many, I mean, it was a lot but  
11 was it one room full or is it a building full.

12 Q Are you aware of whether, at any time  
13 during the course of this project, the Madison  
14 project, that Mr. Stephens' role diminished?

15 A Am I aware that it diminished?

16 Q Yes.

17 A Yes, I was aware.

18 Q How did that come to your attention?

19 A Well, I didn't see him around the office  
20 so much anymore. And my understanding was that Jay  
21 had been the contact person with the Independent  
22 Counsel's office in Washington, and I did not know

1 then, but I know from the testimony at the hearing  
2 that he knew Fiske, and he was the contact person  
3 with Fiske.

4 And then later, when Starr had been  
5 appointed, that Chuck, who knew Ken Starr, I mean he  
6 was acquainted with him, and he knew him from some  
7 bar activities, that Chuck was going to be the  
8 contact person with Ken Starr.

9 Q You mean the legal bar, right?

10 A Yes.

11 Q Just so the record's clear.

12 A The ABA.

13 So I was vaguely aware that that was  
14 dropping off. The 6(e) problem that Jay had  
15 initially been addressing about getting some  
16 documents that were technically owned by or that the  
17 RTC had some ownership rights in and that were in the  
18 hands of the Independent Counsel had been resolved as  
19 well, I think. But I'm not sure.

20 At any rate, I became aware over time that  
21 Jay's role diminished but I didn't know how much.

22 Q Did you make any inquiries about Mr.

1 Stephens not being around as much, like what  
2 happened, why isn't Jay around?

3 A The only person I ever asked was Bruce  
4 Ericson, some time in 1995, and I was on the phone  
5 with Bruce and I said, where's Jay these days, what  
6 happened to Jay. I said what's Jay doing.

7 And he said, I don't think he's doing too  
8 much, but Chuck usually deals with Jay.

9 And that's all that he said. That's some  
10 time in 1995. My best guess would be mid-1995.

11 Q I gather that he wasn't working on the  
12 case as far as you know?

13 A As far as I know now, he wasn't. As far  
14 as I knew then, I thought he was working on the case.

15 Q Did you ask him why he wasn't working on  
16 it?

17 A No. The conversation took place exactly  
18 as I just described it. What's Jay doing, I haven't  
19 seen him.

20 Q Did you ask him why he wasn't working on  
21 the case?

22 A No.

1 Q And he said he wasn't doing much of  
2 anything else?

3 A Bruce said, I don't think he's doing much  
4 of anything, but Chuck usually talks to Jay so I  
5 don't know.

6 Q Were you surprised by Mr. Ericson's  
7 comments?

8 A No, I wasn't surprised one way or the  
9 other. I was just inquiring after Jay because, I  
10 mean, he was a nice guy and I hadn't seen him in a  
11 long time, and I was wondering what he was up to.

12 Q Have you learned since then why Mr.  
13 Stephens' role in the project diminished or ended?

14 A Only what I heard at the hearing.

15 Q Last week?

16 A That Senate hearing, right.

17 Q Do you know whether Mr. Stephens had any  
18 role in reviewing the reports that were produced?

19 A I do know that he reviewed the first  
20 Whitewater report or reports. I'm not sure how many  
21 drafts he had reviewed, but I was told by Bruce that  
22 he had done that at the time that he had done that.

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1 Q Do you know what time period?

2 A It was in 1994.

3 Q Was that the April preliminary report?

4 A I believe so, and it may have been the  
5 report after that. I think he reviewed the first two  
6 or first few. I remember Bruce saying that we had  
7 told Bruce and I might add Mark Gabrellian, and by  
8 that, I mean Mark Gabrellian, Melinda and I had told  
9 Bruce that there was a little too much funny stuff in  
10 the first report, there were light directions to  
11 Whitewater, the way he described it, it was not  
12 substantive, and the way he described it Jay thought  
13 it was a little too lighthearted as well.

14 So Bruce mentioned to me that in fact Jay  
15 said that.

16 Q Did he relate any other comments Mr.  
17 Stephens made with regard to the report?

18 A No, not that I recall. I don't think so.

19 Q Did you have any discussions with Mr.  
20 Stephens about his review of the reports?

21 A No, I never did.

22 Q Do you know or did you ever hear that Mr.

1 Stephens was critical of the reports, any of the  
2 drafts?

3 A No, absolutely not.

4 Q I'd just like to go back, I want to make  
5 sure we covered all the conversation you had with Mr.  
6 Stephens.

7 You talked about the initial meeting when  
8 he showed up on the OTS documents, and then you said,  
9 I believe, you talked to him in the hallway, and then  
10 there was an additional meeting, an additional  
11 conversation with him?

12 A Yes.

13 And there was one more. I went over to  
14 their offices, the Pillsbury, Madison & Sutro  
15 offices, I think it was the office at 17th & K with  
16 Terry Arbit. I'm not sure whether we were looking at  
17 documents or what, but we did not meet with Jay. But  
18 Jay came down and moved us from one conference room  
19 to another and he said he thought we'd be more  
20 comfortable in there.

21 I can't remember why exactly we were over  
22 there, but he came in and said, hi, how are you

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1 doing, this and that. There were no substantive  
2 discussions about any work, until I saw Jay again the  
3 night before, the night after Bruce Ericson's  
4 deposition around the 10th of this month. I'm not  
5 sure I've seen him again. I can't recall the last  
6 time I ever saw him.

7 Q How did you come to see him after Mr.  
8 Ericson's deposition?

9 A We went back to the Pillsbury office and  
10 he was up there.

11 Q What was the purpose of that meeting?

12 A No reason. We were just going back to the  
13 Pillsbury offices, and we didn't discuss the case.  
14 We just ran into him.

15 Also, in addition to the meetings, I  
16 talked to Jay on the phone a few times about getting  
17 access to documents or needing to get someone to get  
18 access to the documents, not me, but sending somebody  
19 else up there, something like that.

20 Q Did he help you out at that time?

21 A He did. And the last time I called his  
22 office, I did not speak to him but it was in January



1 or February of 1996.

2 Q Now with regard to the 10th being over at  
3 PMS, who were you over there with?

4 A Bob Gutkin who was representing Bruce  
5 Ericson. Bob Gutkin, Bruce Ericson and Jay was  
6 there.

7 Q Again, what was the purpose of the  
8 meeting?

9 A We had been down here for the deposition.  
10 Bob had to go back to his office. Bruce was I don't  
11 know staying in the area around there, so we all  
12 shared a cab back there, went upstairs and talked for  
13 a few minutes and went home.

14 Q No discussion of substance about this  
15 matter?

16 A We talked about what went on at the  
17 deposition but, I mean, Bruce and Bob and I had been  
18 here all day.

19 Q Was one of the reasons PMS was chosen to  
20 work on this matter because they had an office in  
21 Washington, D.C.?

22 A That was my understanding but I don't know

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1 that for a fact.

2 Q Other than Mr. Stephens, did anyone else  
3 at the PMS office do any work on this matter?

4 A Jonathan Byrd, a paralegal named Jonathan  
5 Byrd, and there was a woman paralegal at the same  
6 time who was helping us with the documents. I'm not  
7 aware of any other attorney, but there may be. I  
8 mean, outside of this Bob Gutkin who came to  
9 represent Bruce, represented Bruce and Chuck at the  
10 hearing, there wasn't anybody else to my knowledge.

11 Q What percentage of the work on this matter  
12 was run, as far as you know, out of the PMS  
13 Washington office?

14 A I don't know. I mean -- I don't know.

15 Q During the course of the project, did the  
16 utilization of the PMS Washington office benefit the  
17 project?

18 A Yes, I think it did. And I found it to be  
19 useful in other cases because especially a big firm  
20 like Pillsbury, if they've got a report or a document  
21 and you've got a deadline, they can press a button in  
22 San Francisco, and it will appear in the D.C. office.

1           It's also useful if you have lawyers  
2 coming in from the West Coast or wherever from out of  
3 town, the RTC and the FDIC is not exactly lavish in  
4 terms of conference rooms or anything else.

5           It seems to me very useful to have them  
6 here and also in the dead bank thrift industry, one  
7 of the places that somebody can always complain is in  
8 the District of Columbia in addition to wherever the  
9 bank is located.

10       Q   Who determined what the structure and the  
11 priorities of the investigation would be? How was  
12 that set up?

13       A   I don't know.

14       Q   Did the RTC give PMS instructions as to  
15 what specific matters they wanted them to look into  
16 and how they thought the investigation should be  
17 conducted? Do you have any idea how that was set up?

18       A   No. I think we provided Pillsbury, I mean  
19 all of the information that we had about the prior  
20 investigation, the prior litigation, all the press  
21 reports, the criminal referrals, everything we could  
22 think of, and they either advised us what was open

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1 and ought to be looked into, or that was a joint  
2 decision between Mark and Chuck.

3       Q   Were there any meetings, are you aware of  
4 meetings that took place where the specific areas of  
5 inquiry, what they would be and what management would  
6 look at involving PMS and the RTC?

7       A   No, I'm not aware of any. I don't recall  
8 any.

9       Q   Do you know how those were determined?

10       A   I don't.

11       (Pause.)

12       Q   With regard to witnesses that were  
13 interviewed and deposed, how were those determined?

14           Who determined who would be called to  
15 testify and who would be interviewed?

16       A   The decision to interview people or to  
17 figure out who to go interview or depose was left,  
18 consistent with every other case I've ever handled,  
19 up to the outside counsel.

20       Q   Did they consult with the RTC with regard  
21 to the people they were contemplating calling?

22       A   They tell us who they're going to call. I

1 have never told anybody, including Pillsbury, not to  
2 talk to a witness. They tell us who they're going to  
3 go call. They run it by us. We talk about it  
4 sometimes.

5 They say, you know, it's an ex-bank board  
6 person, can you help me out with them. We might have  
7 suggestions about that I saw so and so's name on the  
8 exam report, that would be a good person for you to  
9 talk to.

10 Suggestions for them but, no, it was left  
11 up to the outside counsel.

12 Q With regard to people officials of the RTC  
13 suggesting that PMS interview or depose or take  
14 interrogatories from, are you aware of any  
15 suggestions ever made to interview people that were  
16 not taken by PMS?

17 A No. I only suggested that they talk to  
18 one person, and I know that they did talk to that  
19 person. I don't know of any other suggestions that  
20 were made to Pillsbury.

21 (Pause.)

22 Q Are you aware that a lot of the witnesses

1 that were spoken to with regard to this matter were  
2 interviewed without being sworn under oath?

3 A Yes, I was.

4 Q Is that a common practice in RTC  
5 investigations?

6 A Yes, it is. I discussed it with Bruce  
7 Ericson and he said he wanted the witnesses to feel  
8 comfortable and to give him information.

9 He also pointed out to me something that I  
10 knew. Statements to a federal agent in pursuit of  
11 his official responsibilities are subject to the  
12 False Statements Act, so you can go to jail if you  
13 lie.

14 MR. COLE: Were your witnesses advised of  
15 that fact at the outset of the interview, do you  
16 know?

17 THE WITNESS: I don't know that that's a  
18 standard practice.

19 MR. COLE: Did you do any of the  
20 interviews yourself?

21 THE WITNESS: I attended two, maybe three.  
22 I can think of two off the top of my head.

1 MR. COLE: Can you recall whether those  
2 interviews, do you know whether the witnesses were  
3 advised about the False Statements Rule?

4 THE WITNESS: I'm not aware that they  
5 were, but I don't know. I only went to two.

6 MR. COLE: So you can't speak for the  
7 others?

8 THE WITNESS: No, there were dozens of  
9 others. But I'm not aware of any requirement that  
10 you tell somebody, I mean, the law is the law.  
11 Usually the two interviews I attended, you know, if  
12 somebody's represented by counsel and you come in and  
13 talk to someone who represents the government, you  
14 know.

15 BY MR. O'CALLAGHAN:

16 Q The interviews you attended were  
17 interviews conducted by PMS staff members?

18 A Yes.

19 Q Were there any witnesses that you're aware  
20 of that were not interviewed or deposed that you felt  
21 should have been deposed by PMS?

22 A No, I'm not aware of anybody.

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1 (Pause.)

2 Q Did you participate in any way in the  
3 writing of the various reports in connection with the  
4 Madison matter?

5 A I reviewed the reports.

6 Q At which stage did you review them?

7 A Let me make it clear. I reviewed the  
8 Whitewater reports, and was responsible for making  
9 any changes, editorial changes I thought were  
10 necessary, and the Rose Law Firm reports. I have  
11 read all of the other reports once. But I didn't  
12 feel reviewing them was my responsibility. I read  
13 them but I didn't feel responsible for them, and was  
14 never told I was responsible for them.

15 Q The Whitewater report and the Rose Law  
16 Firm report was in your area of responsibility?

17 A Right.

18 Q Who else reviewed the reports from RTC?

19 A Mark Gabrellian, Melinda Meador, Tom  
20 Heinz, Andy Tombak, Ellen Kulka, Jim Dudine.

21 Q Will you spell it for the record?

22 A D-U-D-I-N-E.



1 At least the very early drafts, and  
2 possibly Gary Watts.

3 That's all I can think of. There may have  
4 been some other people.

5 Q How many of these people made edits to the  
6 various drafts that you're aware of?

7 A I don't remember Watts ever making any  
8 edits. And I'm not positive that he got them.

9 I don't recall Dudine making any edits.

10 But the rest of them all made edits at one  
11 point or another.

12 Q As far as the whole process and getting  
13 the reports ready, what was the stated purpose of  
14 having people from the RTC review the work product of  
15 PMS?

16 A Well, like any report that's prepared by  
17 outside counsel in the legal division, it's  
18 eventually got to go to the client, I mean the  
19 business side of the RTC, and the purpose of it was  
20 so that we could review it and see if it was  
21 comprehensible, and where it wasn't, to try and make  
22 sure that it was amended so that we thought that the

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1 client could understand it.

2 Q The client being the RTC?

3 A Yes, being the business side of the RTC.

4 Q Who was it directed to? Who was on the  
5 business side?

6 A Ultimately it was Jack Ryan, you know. He  
7 was the Deputy and Acting Director of the RTC. I  
8 mean, usually, if it had been fully staffed, there  
9 would have been more people that it had been directed  
10 to, but he was the only guy there.

11 And we also reviewed it to see or make  
12 sure that there weren't any factual inaccuracies that  
13 we were aware of, typos, years, things like that.  
14 Generally any change that we saw that we thought  
15 might be necessary.

16 Q Are you aware whether, during the course  
17 of the review by various RTC personnel of the drafts,  
18 whether any substantive changes were made to the  
19 reports?

20 A I only recall making one substantive  
21 change to the reports.

22 Q What change was that?

1 A In the final draft of the Whitewater  
2 report in December of 1995, toward the end, there was  
3 a conclusory paragraph. I haven't looked at this  
4 stuff for five months so I'm not positive, but it  
5 says, it now says there is no direct evidence to  
6 support a cause of action, blah, blah, blah.

7 I added that word "direct." It said there  
8 was no evidence, prior to that edit on my part.

9 Q That was a change that was adopted by the  
10 PMS?

11 A Yes. And I remember it because the  
12 closeout memo had tracked the language of the  
13 conclusion and that had to be changed too. It was  
14 very late in the day.

15 That's the only substantive change that I  
16 ever recall making.

17 Q Did you have any discussions with anyone  
18 at PMS about making that change?

19 A Oh, yes, I talked to Bruce.

20 Q What was the conversation?

21 A I said, Bruce, in this conclusion I think  
22 what you should say is no direct evidence, rather

1 than no evidence.

2 He said, yes, I think you're probably  
3 right, okay.

4 Q Were you aware of indirect evidence that  
5 would support a cause of action?

6 A Well, I mean, just the fact that they were  
7 in the transactions together was the indirect  
8 evidence to support saying that.

9 Q When you say they were in the transaction  
10 together?

11 A Well, I mean the Clintons and the  
12 McDougals.

13 Q Other than the fact that they were in the  
14 transaction together, were you thinking of anything  
15 else in mind?

16 A No, nothing in particular.

17 MR. COLE: Be clear on this. Was there  
18 any factual information that you were aware of and  
19 that you had in mind when you suggested that change  
20 that's not set out in the final report?

21 THE WITNESS: No, absolutely not. I just  
22 wanted to make it clear and I'm not sure that Bruce,

1 I just think maybe it was a typo but it happened to  
2 be a substantive typo. That's all.

3 MR. COLE: You felt that was a more  
4 conservative way to phrase it? Is that an accurate  
5 characterization of what you said?

6 THE WITNESS: Yes. And I think, like I  
7 say, I have not reviewed the report in a long time.  
8 I'm not aware of anything in addition to what's in  
9 the report, but my sense at the time was there was  
10 some circumstantial evidence that possibly they knew  
11 about it.

12 BY MR. O'CALLAGHAN:

13 Q When you say they knew about it, again  
14 you're referring to the Clintons?

15 A Yes.

16 Q That they knew what?

17 A I can't remember what the conclusion said,  
18 but I remember the difference between direct and not  
19 direct.

20 MR. O'CALLAGHAN: Can we go off the record  
21 for a second?

22 (Discussion off the record.)

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1 THE WITNESS: I have not been able to find  
2 it. Like I say, I've not looked at that in about  
3 five months. I thought it was in the conclusion but  
4 maybe it's somewhere else, and it may have been in  
5 one of the other reports that were finished at the  
6 end of December 1995. I mean that's the only  
7 substantive change I ever remember asking Bruce to  
8 make to either or any of the reports.

9 BY MR. O'CALLAGHAN:

10 Q The reason you made that change was to  
11 make a correction that there wasn't any direct  
12 evidence but you're aware of other evidence that  
13 might have supported a claim?

14 A I think it's just more accurately set out  
15 what was contained in the report. And Bruce agreed  
16 that that was a better way to say it.

17 (Pause.)

18 Q Were you satisfied, after all the reports  
19 were done, that PMS had successfully done what the  
20 RTC had asked them to do?

21 A Yes, I think they'd done an excellent job.

22 Q What did you understand their mission to

1 be?

2 A To examine the available evidence to see  
3 whether there was cost effective litigation claims  
4 that could be brought against any parties.

5 Q Was that limited in any way by looking at  
6 intentional misconduct or fraud?

7 A Right. Any claims that could be brought  
8 under existing statutes.

9 Q By cost effective, are you referring to  
10 the ability to collect money judgments against any  
11 suits that might be brought against people?

12 A Yes. The collection would outstrip the  
13 expenses.

14 Q Is that one of the major considerations in  
15 the investigation report?

16 A That is the touchstone for going forward.  
17 I mean, that's the kind of litigation that we look  
18 for. We don't look for litigation where we lose  
19 money.

20 Q You're looking to collect funds to satisfy  
21 losses that have been incurred by the institutions?

22 A That's right.

1 Q So you weren't looking to investigate  
2 criminal activity that would have resulted in money  
3 judgments for the agency?

4 A We were not doing a criminal  
5 investigation, that's correct.

6 MR. COLE: May I clarify something before  
7 we go on?

8 MR. O'CALLAGHAN: Sure.

9 MR. COLE: My understanding, from reading  
10 the reports, Mr. Igo, is that there are some  
11 instances where claims might have been pursued, had  
12 it been cost effective to do so. And I take a good  
13 example of that, based on your report, would be Mr.  
14 McDougal.

15 Is that a fair reading of the report that  
16 there might have been potential claims against Mr.  
17 McDougal but that they likely would not have been  
18 cost effective to pursue. Is that correct?

19 THE WITNESS: That's correct. I think  
20 that may have been true even in the initial  
21 investigation when McDougal refused the judgment  
22 proof. I cannot recall when he went bankrupt but now



1 he is beyond reach of civil litigation.

2 MR. COLE: With that in mind, with respect  
3 to the involvement of the Clintons in the matters  
4 that the investigator reported on in the reports,  
5 were there any claims involving the Clintons that a  
6 judgment was made that it would not be pursued  
7 because it's not cost effective?

8 THE WITNESS: I don't recall. It would be  
9 set out in the report. If it's not in the report,  
10 then it wasn't found.

11 MR. COLE: I found none in reading the  
12 report, so I'm asking if you know something I do not?

13 THE WITNESS: I do not know anything  
14 that's not set out in the reports.

15 BY MR. O'CALLAGHAN:

16 Q Just to follow up on that, did the reports  
17 exonerate the Clintons from any kind of illegal  
18 activity that you're aware of?

19 A The reports speak for themselves. They  
20 say on their face that they did not exonerate anybody  
21 from anything.

22 MR. O'CALLAGHAN: I want to go off the

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1 record for a second.

2 (Recess.)

3 BY MR. O'CALLAGHAN:

4 Q Did anyone at the RTC make a request to  
5 have any particular attorneys from PMS participate on  
6 the project?

7 A Not that I'm aware of.

8 Q Who had ultimate authority viz a viz the  
9 content of the final reports?

10 A Ultimate authority? I'm not sure. It  
11 never really came up. I'm not sure what your  
12 question is.

13 Q The question is with regard to members of  
14 PMS staff, Mr. Ericson and other people primarily  
15 drafted the reports in this matter, and then people  
16 from the RTC reviewed the reports and gave comments  
17 and edits to the reports.

18 With regard to the final product that was  
19 produced, was PMS required to include the items that  
20 RTC put forward?

21 A No.

22 Q But RTC was the client to PMS, is that

1 correct?

2 A That's right. But I don't think you can  
3 require anybody to put something in their report or  
4 their work product that they're not comfortable with.

5 If we had told them that we want these  
6 edits whether it bothers you or not, they said we  
7 don't want to do it, their name would have come off  
8 it. We would have gotten the report in the mail but  
9 it would not have been a Pillsbury report.

10 So the ultimate responsibility for the  
11 content of these reports was vested with Pillsbury,  
12 Madison & Sutro.

13 Q Are you aware of any edits that were made  
14 by RTC personnel that were not accepted by PMS?

15 A I only know one that I suggested to Bruce  
16 very early on in one of the first drafts of the  
17 Whitewater report.

18 Bruce had put in part of some Tucker  
19 Allen, the accountant's work product, that talked  
20 about the Clintons' tax returns or amended tax  
21 returns. I don't remember now.

22 And the tax returns or amended tax returns

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1 may not have been filled out properly. And it wasn't  
2 an edit. I asked Bruce if that belonged in there  
3 because I was a little uncomfortable, not being a tax  
4 lawyer, unless he knew something about tax law,  
5 leaving that in there, because it was not something  
6 that the RTC could pursue and collect.

7 And Bruce said, no, I think I'm  
8 comfortable that Tucker Allen knows about that, and  
9 to take it out might later be viewed as taking out  
10 something critical in order to be more favorable to  
11 the Clintons.

12 And I said I hadn't thought of that, and I  
13 agreed, and it was left in.

14 Q So you're all aware of the political  
15 sensitivity of the project?

16 A I would say we were aware of it.

17 Q That's the only suggestion or comment or  
18 whatever it was that wasn't followed by PMS?

19 A Well I'm sure that not all of the edits  
20 that were suggested got in there, but that was the  
21 only one I ever had any discussion with him about.  
22 It's the only one I know of.

1 Q What was your reaction to the discovery of  
2 the Rose Law Firm billing records in January 1996?

3 A January of 1996?

4 Q Yes, sir.

5 MR. COLE: I gather you were surprised?

6 THE WITNESS: Yes, I was surprised when  
7 the billing records were discovered. I was  
8 surprised.

9 BY MR. O'CALLAGHAN:

10 Q Did you review them?

11 A Yes, I took a look at them. Bruce took  
12 primary responsibility for reviewing them, but I had  
13 a copy of them and looked at them.

14 Q What was your reaction after you looked at  
15 them?

16 A I don't remember any particular reaction  
17 one way or another. I mean I just looked at them and  
18 waited for Bruce to prepare the report.

19 Q After you reviewed the Rose Law Firm  
20 billing records that were discovered in January '96,  
21 were you of the opinion that this was a piece of  
22 evidence that would have aided the investigation or

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1 writing the reports?

2 A Well, that's why, when you say January of  
3 1996, I think we became aware of them prior to the  
4 running of the statute of limitations and it was  
5 extended, I mean, by a tolling agreement. So it was  
6 reviewed within the statute of limitations period.

7 But, yes, they were reviewed, and if they  
8 had been discovered earlier, they would have been  
9 reviewed earlier.

10 Q Did you have any criticism of the reports  
11 in the final form?

12 A No. I thought they were fine.

13 MR. O'CALLAGHAN: I have no further  
14 questions.

15 EXAMINATION

16 BY MR. COLE:

17 Q Mr. Igo, as you know, I'm Lance Cole,  
18 Democratic counsel to the Committee. I apologize for  
19 coming in late to the deposition.

20 I would like to go back over a couple of  
21 points that I suspect Mr. O'Callaghan has already  
22 covered. I'll try to be as brief as I can.

1 What prior experience did the RTC have  
2 with the Pillsbury, Madison & Sutro firm before  
3 engaging them for the reports that are the subject of  
4 your deposition?

5 A I know they had been involved in the  
6 Symington case that I believe arose out of Southwest  
7 Savings.

8 I also have been told by Bruce that he was  
9 involved in the Lincoln Savings & Loan case against  
10 Keating. I'm not sure which part of that case.

11 I also am aware that Bruce has represented  
12 the Federal Home Loan Bank of San Francisco and the  
13 FSLIC, and I believe maybe the RTC in other matters.

14 But I know he goes back to pre-1989 in  
15 terms of representing the agency to failed thrifts.

16 I was not aware of any other specific  
17 cases back then. I mean, I heard about it at the  
18 hearing.

19 Q Had you personally been involved in any  
20 prior matters with the Pillsbury firm?

21 A One. In 1986. It was a subpoena  
22 enforcement case. It did not involve the Federal

1 Home Loan Bank Board as a party. A litigant was  
2 trying to get access to Federal Home Loan Bank  
3 reports. The case was pending in San Francisco. I  
4 asked one of my superiors at the time who could  
5 appear in San Francisco who I could get to go  
6 represent the agency there. He suggested I call the  
7 Federal Home Loan Bank in San Francisco and get a  
8 recommendation. They recommended Pillsbury. I used  
9 a Pillsbury associate, and it was a very small  
10 matter.

11 Q You mentioned Mr. Ericson's prior work for  
12 the agency.

13 Are you aware of whether Mr. Patterson had  
14 been involved?

15 A He had been in the Southwest Savings and  
16 the Symington case, yes.

17 Q What about Mr. Stephens, had he done any  
18 prior work for the agency to your knowledge?

19 A I don't know when he was hired to work on  
20 the Trust Bank case. I do know that came up shortly  
21 after the firm was hired, but I don't know when he  
22 got involved in that case.



1 Q What is your perception of how the agency  
2 viewed the work that the Pillsbury firm had done on  
3 these various matters?

4 A I've never heard any negative comments on  
5 their work from anybody. In fact, I've only heard  
6 praise for the methodology and the writing, etcetera.

7 Q Am I correct in understanding that a law  
8 firm has to take certain steps or at the time that  
9 the Pillsbury firm was engaged for this matter, a law  
10 firm had to take certain steps in order to be  
11 qualified to be engaged by the RTC?

12 A Yes. I had explained I think the hiring  
13 of the law firm.

14 Q If you laid something out in the record in  
15 great detail, don't feel that you have to go over it  
16 again.

17 A There were rules and divisions who handled  
18 them.

19 Q I take it that Pillsbury was one of the  
20 firms that satisfied those requirements?

21 A Yes, they satisfied the requirements.

22 Q Were there a limited number of very large

1 firms, with the kind of staffing capabilities that  
2 you described earlier, that had met those  
3 qualifications?

4 A It's limited to some extent, yes.

5 Q Would it be fair to say that Pillsbury is  
6 one of a relatively small number of large firms that  
7 the RTC turns to for large matters?

8 A I don't know how many firms altogether the  
9 FDIC or the RTC used for these large matters, but I  
10 would say a dozen or something at the most.

11 Q Do you have any knowledge or understanding  
12 that the RTC engaged the Pillsbury firm in this  
13 matter specifically so that Mr. Stephens could work  
14 on the engagement?

15 A Do I have any knowledge of that? I have  
16 no knowledge that that took place.

17 Q Do you have any reason to believe that  
18 that was the case?

19 A No, I have no reason to believe that was  
20 the case.

21 Q In my understanding, again, I apologize if  
22 you've testified to this previously, but my

1 understanding is that Mr. Stephens did work on this  
2 matter initially, and by this matter, I mean the  
3 Madison Guaranty engagement.

4 A That's my understanding, yes. And I saw  
5 him at the RTC several times, or a couple of times.

6 Q And you've testified to Mr. O'Callaghan  
7 regarding those occasions?

8 A Yes.

9 Q Are you aware that anyone at the RTC had  
10 any problems or reservations about Mr. Stephens' work  
11 on the Madison Guaranty matter?

12 A No, I was not, and am not.

13 Q Do you recall a time at which there was  
14 some publicity in the newspapers and otherwise about  
15 Clinton Administration officials expressing  
16 displeasure or reservations about Mr. Stephens'  
17 involvement in this matter?

18 A Yes.

19 Q What if anything do you recall about what  
20 was said within the agency about the White House  
21 reaction to Mr. Stephens?

22 A I think I've pretty much covered

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1 everything that I have heard about that.

2 Q Then let me ask what I at least would view  
3 to be the key question.

4 As a result of that publicity, did anyone  
5 at the agency indicate that Mr. Stephens' involvement  
6 should be curtailed or limited?

7 A No.

8 Q Do you have any understanding that that in  
9 fact occurred, and by that I mean that Mr. Stephens'  
10 role changed because of the publicity?

11 A No, I do not understand that to be the  
12 case.

13 Q Were there any instances in which the RTC  
14 gave the Pillsbury firm directions or instructions as  
15 to how to staff the matter internally?

16 A No, there were not.

17 Q So to the best of your knowledge, all  
18 staffing decisions were made by Pillsbury without any  
19 direction from the RTC?

20 A Yes.

21 Q That would also be true as far as Mr.  
22 Stephens' role in the matter was concerned?

1 A Yes.

2 Q Do you know whether there came a time when  
3 Mr. Stephens was asked to review or comment on either  
4 drafts or the final versions of the reports that his  
5 firm prepared?

6 A Yes, I heard that testified to in the  
7 hearing.

8 Q Do you have any knowledge apart from what  
9 you heard at the hearing?

10 A I believe that Mark Gabrellian told me, at  
11 some point, I cannot remember the date, some time in  
12 1995, I had a conversation with Mark where he said to  
13 me, Chuck is going to ask Bruce, I mean, he's going  
14 to ask Jay to take a look at the reports, and I said  
15 okay. And that was the end of the conversation.

16 Q Did Mr. Gabrellian indicate to you why he  
17 wanted Mr. Stephens to review the reports?

18 A No. It wasn't quite the end of the  
19 conversation because he did add I thought that would  
20 be a good idea, period. And that was the end of the  
21 conversation. I left the office thereafter.

22 Q I'm sorry. So that I'm understanding

1 correctly, Mr. Gabrellian said that he thought it  
2 would be a good idea or you said you thought it would  
3 be a good idea?

4 A No, Mr. Gabrellian said he thought it  
5 would be a good idea.

6 Q Did you express any personal opinion as to  
7 whether or not that would be a good idea?

8 A No. I didn't think it was unusual. I  
9 didn't think about it at all.

10 Q Actually you anticipated my next question  
11 or line of questions, because I would like to ask you  
12 about this instance in which Mr. Stephens was asked  
13 to comment on the reports.

14 In my questions, I'd like for you to  
15 respond based only on what happened not only in the  
16 specific instance but also in terms of your  
17 experience generally in terms of the RTC's experience  
18 working with outside counsel.

19 In particular, when the RTC had retained a  
20 firm to investigate a matter for the agency, and that  
21 firm had a work product that was being prepared for  
22 the agency, would it be unusual for the agency to ask

1 the firm to have a particular lawyer in the firm, who  
2 had expertise in a particular area, look at the  
3 report and comment on it?

4 I'm sorry, I know that's a long question  
5 and I suspect you know what I'm getting at.

6 A No, I'm not sure I do.

7 I don't quite follow you.

8 Q Let me rephrase the question.

9 You had retained the firm, that is, the  
10 Pillsbury firm, and not particular lawyers within the  
11 firm. Is that correct?

12 A That's right.

13 Q And Mr. Stephens was a member of the firm  
14 throughout the time the firm performed legal services  
15 for the agency?

16 A That's correct.

17 Q Were you aware that Mr. Stephens had  
18 particular experience as a United States Attorney and  
19 some expertise in criminal law matters?

20 A I knew he was a U.S. Attorney.

21 Q In that situation, where you had a member  
22 of the firm who had experience that potentially was

1 relevant to an investigation, would it be unusual to  
2 ask that that particular member of the firm review a  
3 product and get his or her comments?

4 A Would it be unusual? I mean, I don't know  
5 that I've ever asked for a particular attorney to  
6 review something. I've asked for a bankruptcy  
7 department's opinion or for a bankruptcy attorney's  
8 opinion.

9 Q That's exactly what I'm talking about.

10 A But not a particular one. That might be a  
11 little more unusual. It just never happened to me.

12 Q I can't testify here, but in my  
13 experience, it's not unusual if a law firm is engaged  
14 for someone to say run this past a tax expert and run  
15 that past a bankruptcy expert.

16 A That's very common in my experience.  
17 Perhaps I've not dealt with enough national legal  
18 experts. I know if he is the biggest bankruptcy  
19 expert in the world, I want him personally, but that  
20 is not inconsistent in my opinion.

21 Q Are you aware of instances in which the  
22 RTC staff had reservations about either the content



1 or the conclusions of the reports that were prepared  
2 by the Pillsbury firm?

3 A No.

4 Q Has any information come to your attention  
5 since these reports were completed that would cause  
6 you to have reservations about either the content or  
7 the conclusions of the reports?

8 A No.

9 Q Are you aware --

10 Let me rephrase that question.

11 Has anyone else in the RTC expressed to  
12 you any reservations about the reports since they  
13 were completed?

14 A No.

15 Q Turning to a different subject area, were  
16 you involved with the production of documents and  
17 records by the RTC to Congress in connection with the  
18 Madison Guaranty matter?

19 A On and off. That's an awfully big  
20 subject.

21 Q I recognize that. You are aware that  
22 documents were provided both to the House of

1 Representatives and to the Senate in response to  
2 document requests by the agency?

3 A Yes.

4 Q And you played some role in that process?

5 A Yes, I played some role.

6 Q In brief, what was your role?

7 A It would depend on the request.

8 Sometimes I was identifying my own files,  
9 sometimes I was arranging to have files copied at  
10 Pillsbury's offices. It would just depend on the  
11 circumstance.

12 There were an awful lot of requests, and  
13 whenever I was asked to participate to make sure that  
14 whatever was called for from my files was delivered,  
15 I'd make sure it would happen.

16 Q I'd like to put aside production of your  
17 own files that might or might not be responsive to  
18 the request and focus on discussions that may have  
19 occurred inside the agency as to what would or would  
20 not be produced to Congress generally in response to  
21 requests.

22 Were you involved at that level?

1 A I was not involved in that, in any  
2 discussions about whether or not something would be  
3 turned over to Congress. It was always this is being  
4 turned over and this is your part of the turnover.

5 Q Some of the documents that the Special  
6 Committee in the Senate has received from the agency  
7 have redactions. Certain portions of the documents  
8 are redacted. Are you aware of any redactions to the  
9 documents?

10 A No, I'm not aware that any document was  
11 ever redacted.

12 Q So you're not aware of any?

13 A No.

14 Q So if I asked you what information was  
15 redacted, you presumably would not be able to help me  
16 then?

17 A No.

18 Q Did you have any contacts with the Office  
19 of the Independent Counsel concerning what documents  
20 would be produced by the RTC to the Congress?

21 A No, I did not have any contacts with the  
22 Independent Counsel about that.

1 MR. COLE: I don't think I have anything  
2 further.

3 If you could give me just a minute, I'd  
4 like to consult with my colleague here and make sure  
5 that I haven't missed something.

6 (Discussion off the record.)

7 MR. COLE: Go ahead, Mike.

8 FURTHER EXAMINATION

9 BY MR. O'CALLAGHAN:

10 Q I'd like to just go back. Mr. Cole asked  
11 you about the RTC's hiring of the Pillsbury, Madison  
12 & Sutro law firm. Were you surprised when they were  
13 chosen?

14 A I was a little surprised that Mark hadn't  
15 gone with one of my recommendations but otherwise,  
16 no, I didn't know one way or the other.

17 Q Had he asked you for recommendations  
18 previously on other matters?

19 A No.

20 Q Do you know who first brought the idea of  
21 hiring Pillsbury Madison forward?

22 A No. I assume it was John Stewart because

1 he had had very recent experience with them in an  
2 assignment.

3 Q I'd also like to turn to the conversation  
4 you had with Mr. Gabrellian when he told you that Mr.  
5 Patterson was going to ask Mr. Stephens to review the  
6 final reports.

7 When he told you that, had the reports  
8 been put in their final form? Do you know what stage  
9 they were at?

10 A I don't. I remember the conversation but  
11 that's all. It was sometime, it was the final set of  
12 reports. I don't recall.

13 Q Was the purpose of showing, as far as you  
14 know, and you only have to testify to what your  
15 knowledge is, was the purpose of showing Mr. Stephens  
16 the report was to have him make edits to it or give  
17 it his seal of approval?

18 MR. COLE: I would note the use of seal of  
19 approval and suggest to the witness to focus on  
20 whether or not he wants to adopt that  
21 characterization.

22 THE WITNESS: No. All that Mark said that

---

1 Chuck was going to ask Jay to take a look at the  
2 reports, and that's all. I don't know anything else.  
3 I mean in terms of I don't have any information that  
4 Mark was asking for a seal of approval of any sort,  
5 or that Chuck was.

6 BY MR. O'CALLAGHAN:

7 Q What was your impression of the purpose of  
8 showing him the final report?

9 A Just to have him take a look at them. I  
10 did not think it was unusual because he had taken a  
11 look at the earlier Whitewater reports.

12 Q Did you think it was unusual in light of  
13 the fact that Mr. Stephens really hadn't worked on it  
14 for almost a year?

15 A I don't know that Mr. Stephens ever worked  
16 on the Whitewater matter. When he reviewed the first  
17 report, he had no more information than when he was  
18 going to be reviewing the second report. I don't  
19 know what he did on the other matters because I  
20 wasn't involved. I did not have a lot of contact  
21 with Jay.

22 MR. O'CALLAGHAN: I don't think I have

1 anything further.

2 FURTHER EXAMINATION

3 BY MR. COLE:

4 Q I'd like to go back to one point that I  
5 tried to cover earlier. Perhaps I was less clear  
6 than I should have been about it.

7 In your view, was there anything unusual  
8 about asking a member of a firm that a client has  
9 engaged to do a cold review of a work product and get  
10 that person's reaction?

11 A No, I don't think that would be that  
12 unusual.

13 Q Happens all the time, doesn't it, in legal  
14 practice?

15 A Well, I've been asked to review things  
16 that I don't have a factual background in and if I  
17 think on its face that making the assumptions, the  
18 factual assumptions that are contained in the report,  
19 if I think it's invalid, I would say so, or flawed in  
20 some way. I don't have a lot of experience of asking  
21 outside lawyers to have someone do a cold review.

22 Q But in fact, if a lawyer has worked very

1 closely on a matter and is very close to the facts  
2 and the issues, sometimes it's helpful to get someone  
3 who's not close to take a fresh look and just get a  
4 reaction, is it not?

5 A We did that in our office in fact. Jim  
6 Lauer, who was a senior counsel, reviewed the  
7 Whitewater reports and he had a few comments. We did  
8 that precisely to see if he would understand what was  
9 written, if it wasn't English enough for the client  
10 to actually be able to understand it.

11 Q And Mr. Lauer was someone in your office  
12 who had not done work on the Madison Guaranty  
13 investigation?

14 A That's right.

15 Q And your office asked him to review the  
16 reports just to get his reaction, as a rather  
17 uninformed, unbiased reader?

18 A Right. That's my understanding.

19 Q So if Mr. Gabrellian had asked, and ask  
20 you testified did ask Mr. Patterson to have Mr.  
21 Stephens review the reports, that would be  
22 essentially the same thing?



1 A I don't know. I mean you could testify to  
2 that if you want.

3 MR. COLE: I'm always happy to testify.

4 MR. GORDON: What was the name of the  
5 individual within the RTC who was asked to do this  
6 review?

7 THE WITNESS: Lauer, L-A-U-E-R.

8 BY MR. COLE:

9 Q Who asked him to do that?

10 A I'm not sure, either Mark Gabrellian or  
11 Tom Heinz, but Jim Lauer informed me that he'd been  
12 asked to take a look at one of the reports and maybe  
13 more but at least the Whitewater report.

14 FURTHER EXAMINATION

15 BY MR. O'CALLAGHAN:

16 Q With regard to asking Mr. Stephens to  
17 review the report, did you consider the fact the  
18 publicity that surrounded Mr. Stephens' participation  
19 in March of '94 was a factor that was one of the  
20 reasons why they were asking him to review the  
21 reports?

22 A No.

1 Q Was your opinion that Mr. Stephens was  
2 being asked to review the reports to give an  
3 uninformed, unbiased opinion similar to the type that  
4 Mr. Cole --

5 MR. GORDON: I'm going to object to the  
6 question as phrased because you've coupled uniformed  
7 and unbiased. They may want one but not necessarily  
8 the other, so I'd appreciate it if you'd clear that  
9 up.

10 MR. O'CALLAGHAN: Absolutely. I was  
11 borrowing from Mr. Cole's characterization earlier as  
12 regard to whether he was being asked to review the  
13 report from an unbiased point of view.

14 THE WITNESS: We would have expected him  
15 to be unbiased.

16 MR. COLE: I wouldn't have expected you to  
17 testify that you would have wanted a biased review.  
18 Anything is possible, I suppose.

19 BY MR. O'CALLAGHAN:

20 Q How about uninformed?

21 A I didn't know how much information Jay  
22 had. It was the reports, all of them, I didn't know

1 how much work he had done on the other reports. I  
2 assumed he had some information.

3 Q So you're basically saying you don't know  
4 why he was asked to review the reports?

5 A Not specifically.

6 Q Do you know if he ever did review the  
7 reports?

8 A I've heard him testify that he did not  
9 review the reports.

10 Q But had you heard that beforehand?

11 A I think Mark might have mentioned that  
12 Chuck said that Jay didn't feel comfortable. My  
13 recollection is that he said Jay didn't feel  
14 comfortable reviewing the Whitewater report.

15 Q Did he say why?

16 A Because he had not been involved in it  
17 recently.

18 Q Because he hadn't been involved in working  
19 on the matter?

20 A Right.

21 Q Any other reasons given?

22 A No other reasons given.

---

96

1 Q Did you have any reaction to that?

2 A I said okay.

3 FURTHER EXAMINATION

4 BY MR. COLE:

5 Q Did Mr. Lauer express any discomfort with  
6 reviewing the reports because he had not been prior  
7 involved?

8 A No, not as far as I'm aware.

9 Q Do you have any reason to believe that Mr.  
10 Lauer had more involvement or more knowledge than Mr.  
11 Stephens?

12 A I don't have any reason to believe that  
13 Lauer had any more involvement.

14 Q In fact, I believe you testified that he  
15 had no involvement to the best of your knowledge,  
16 prior to being asked to review it?

17 A To the best of my knowledge, that's right.

18 Q And Mr. Stephens had at least some  
19 knowledge because he had billed I think 313 hours to  
20 the RTC on this matter by my count?

21 A You can assume that.

22 MR. COLE: I'll assume it.

## FURTHER EXAMINATION

BY MR. O'CALLAGHAN:

Q Just to be clear, were Mr. Stephens and Mr. Lauer asked to look at the report for the same reason? To you have any knowledge of that?

A I don't have any knowledge.

MR. GORDON: Hasn't Jim already said he has no knowledge of why Mr. Stephens was asked to look at the report.

MR. O'CALLAGHAN: I just wanted to make it clear.

BY MR. O'CALLAGHAN:

Q You're not sure whether they were asked to look at it for the same reasons?

A Yes, true, I'm not sure.

Q So Mr. Lauer's reaction to being asked to look at the report without being familiar with the facts doesn't necessarily mean that he was asked to do the same thing Mr. Stephens was?

A It does not mean anything more than it means.

## FURTHER EXAMINATION

BY MR. COLE:

Q Let me ask this question.

What were they asked to do?

A Jim Lauer was asked to read one or more reports to see if he could understand it and give comments to Bruce.

I'm not sure what Chuck asked Jay to do.

Q What did Mr. Gabrellian say he was going to ask --

A I've already testified to that and that's all I know.

## FURTHER EXAMINATION

BY MR. O'CALLAGHAN:

Q Mr. Lauer was asked to examine it to see if it read well?

A That's my understanding.

MR. O'CALLAGHAN: Thanks. I have no further questions.

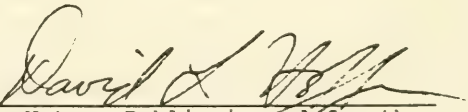
MR. COLE: I'll let you have the last word.

1 (Whereupon, at 4:15 p.m., Friday, May 24,  
2 1996, the taking of the deposition ceased.)  
3  
4

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5 JAMES J. IGO  
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I, DAVID L. HOFFMAN, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires JUNE 30, 2000

**DEPOSITION OF MARK GABRELLIAN  
IN RE: S. RES. 120**

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**WEDNESDAY, MAY 29, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of MARK GABRELLIAN, called for examination pursuant to notice of deposition, at 2:50 p.m. in Room 534 of the Dirksen Senate Office Building, before SHELIA M. LYONS, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, Esq.

Majority Associate Special Counsel

GLENN F. IVEY, Esq.

Minority Counsel

U.S. Senate

Committee on Banking, Housing, and Urban Affairs

534 Dirksen Building

Washington, DC 20510

On behalf of the Committee.

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## P R O C E E D I N G S

MR. BRENNAN: I spoke to Peter Knight from the Federal Deposit Insurance Corporation and he informed me that we should proceed with the deposition even though counsel for the FDIC is not present, and that that is not a problem in taking this deposition.

THE WITNESS: Okay, that is fine. Thank you. And I had been previously advised orally that the FDIC authorized me to waive -- or that the FDIC has waived any and all applicable privileges including the attorney-client, attorney work product, and work process.

MR. BRENNAN: That's correct.

MR. O'CALLAGHAN: Thank you, Mr. Gabrellian.

Good afternoon, Mr. Gabrellian. My name is Michael O'Callaghan. I'm an Associate Special Counsel for the Majority on the Special Committee. With me for the Minority is Glenn Ivey.

This deposition is being conducted pursuant to Senate Resolution 120. The Resolution establishes

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a special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, and other related matters.

I'm going to ask you a series of questions today and ask you to testify under oath. Do you consent to being sworn in over the telephone?

THE WITNESS: Yes, I do.

MR. O'CALLAGHAN: If you don't understand a question at any time, please let us know. We will be happy to rephrase. And likewise if you have trouble hearing a question, we would be happy to repeat it for you. If you need a break at any time, please let us know as well.

The court reporter is preparing a record of questions and answers. The deposition will be treated as Committee Confidential, and you will have the opportunity to come to the Senate to review the transcript of your deposition and make any notive corrections for transcription on an errata sheet.

You may be represented by counsel today.



1 Are you represented by counsel?

2 THE WITNESS: No, I'm not.

3 MR. O'CALLAGHAN: And you understand that  
4 you are able to be represented by counsel; is that  
5 right?

6 THE WITNESS: Yes, I do.

7 MR. O'CALLAGHAN: Objections to form of the  
8 questions will be noted for the record, and any  
9 objections on grounds of privilege or relevance may  
10 be made. The Committee chairman will rule on the  
11 objections where the witness refuses to answer a  
12 question.

13 Could you please swear the witness.  
14 Whereupon,

15 MARK GABRELLIAN  
16 was called as a witness and, having first been duly  
17 sworn, was examined and testified as follows:

18 EXAMINATION

19 BY MR. O'CALLAGHAN:

20 Q Could you please state and spell your full  
21 name for the record.

22 A Mark Gabrellian, G-a-b-r-e-l-l-i-a-n.

1 Q Mr. Gabrellian, did you speak with anyone  
2 other than counsel prior to this deposition?

3 A Regarding?

4 Q This deposition.

5 A Well, the fact of the deposition?

6 Q Did you discuss the potential substance of  
7 the deposition with anybody?

8 A No.

9 Q Okay. Did you do anything to prepare for  
10 the deposition?

11 A No.

12 Q Did you review any documents or have any  
13 conversations with anyone?

14 A No.

15

16

17 Q And are you presently employed?

18 A Yes. Well, I'm in the middle of -- in a  
19 transition period between employment from the FDIC,  
20 going to a new job that is out of the area.

21 Q Okay. Could you give me a brief  
22 description of your employment position between

1 January 1993 through February, 1996.

2 A Okay. Well, actually I was counsel with  
3 the Legal Division, Resolution Trust Corporation.  
4 The actual employment relationship was with the  
5 Federal Deposit Insurance Corporation, and I was then  
6 detailed to the RTC.

7 Q What time were you detailed to the RTC?

8 A Sometime in, I believe early 1992, if my  
9 recollection serves me.

10 Q What were you detailed to the RTC to do?

11 A Initially in what was called their general  
12 litigation section, and then subsequently, into the  
13 professional liability section.

14 Q And when did you go into the professional  
15 liability section?

16 A Within a few months of the detail to the  
17 RTC.

18 Q While you were at the RTC who did you  
19 report to?

20 A Tom Heinz.

21 Q What was his position?

22 A He was associate general counsel.

1 Q Did you report to anybody else?

2 A Well, Tom Heinz was my immediate  
3 supervisor, and then there was a chain of command  
4 above Tom.

5 Q Who did he report to?

6 A Andy Tomback, T-o-m-b-a-c-k, was above him  
7 as a deputy general counsel during some of that  
8 period of time. And then above the deputy general  
9 counsel was the general counsel, who was Ellen Kulka,  
10 also for some period of time.

11 Q And while you were at the RTC, what were  
12 your responsibilities and functions?

13 A As a lawyer for the RTC in a supervisory  
14 capacity overseeing a staff, a team of approximately  
15 anywhere between eight to 12 lawyers handling a  
16 variety of cases and the various support staff as  
17 well.

18 Q Did you have any involvement in matters  
19 related to Madison Guaranty Savings and Loan?

20 A Yes I did.

21 Q What was your involvement with matters  
22 related to Madison?

1 A As a senior counsel, I supervised a number  
2 of staff attorneys assigned to conduct the  
3 investigation into the failure of Madison Guaranty,  
4 pursuant to the provisions of the RTC Completion Act.

5 Q And during what time was that investigation  
6 conducted?

7 A Early 1994 through the sunset of the RTC,  
8 December 31, 1995. After that point in time, I  
9 reverted back to the FDIC, but had no further  
10 involvement having anything to do with Madison  
11 Guaranty.

12 Q What were the names of the attorneys that  
13 you supervised in connection with this project?

14 A Jim Igo, Terry Arbit, A-r-b-i-t; Melinda  
15 Knashiu, K-n-a-s-h-i-u.

16 Q Anyone else?

17 A At various times other lawyers, you know,  
18 came to help, especially early in the process, but  
19 those three constituted the core.

20 Q Could you give just a general sketch of the  
21 type of investigation that was conducted at Madison  
22 while you were there.

---

10

1 A Typical of all other professional liability  
2 investigations, except that, under the Completion  
3 Act, it was limited to what were essentially fraud  
4 based claims.

5 Q Would that include intentional misconduct?

6 A Right.

7 Q And these are all civil claims; is that  
8 right?

9 A Correct.

10 Q You had no criminal authority?

11 A No.

12 Q In connection with this investigation that  
13 you were involved with, did you work with outside  
14 counsel --

15 A Yes.

16 Q -- at any time?

17 A Yes.

18 Q Did you work on the investigation before  
19 outside counsel was hired?

20 A Yes.

21 Q For what period of time?

22 A From the time that I was originally

1 assigned to it, which was sometime in the middle of  
2 January 1994, up until the time that outside counsel  
3 was retained, which was sometime in February. The  
4 documents that you folks have in your possession  
5 would give you the exact date.

6 Q Prior to hiring, what -- excuse me, what  
7 caused the RTC to hire outside counsel in connection  
8 with this matter?

9 A The RTC Completion Act required, prior to  
10 retention of outside counsel, that there be some  
11 finding of the need for retention of outside  
12 counsel. I don't have the Act in front of me, but  
13 there's a various litany of things that needed to be  
14 essentially determined prior to incurring expenses  
15 for outside counsel.

16 At some point in time it became apparent,  
17 especially since the original Statute of Limitations  
18 date on the Completion Act claims involving Madison  
19 was the end of February '94, it became apparent that  
20 staff had done as much as it could and that we would  
21 need many more bodies, in particular lawyers, to  
22 complete the process as well as could possibly be

1 done under the circumstances.

2 Q So you were looking for bodies to assist in  
3 the project before the running of the Statute of  
4 Limitations?

5 A Correct.

6 Q Did there come a time when that statute was  
7 extended?

8 A Yes.

9 Q After the statute was extended, was there  
10 any discussion about releasing the outside counsel?

11 A No.

12 Q Why was that?

13 A Because we had come to a sufficient  
14 conclusion regarding the need for additional  
15 investigation that, under the procedures in place at  
16 the RTC for retention of outside counsel, we  
17 determined to continue to do this as we were handling  
18 all other cases; that is, with outside counsel  
19 working with staff.

20 Q Okay. Prior to hiring outside counsel, had  
21 the RTC reached any preliminary conclusions as to  
22 whether there were any cost-effective claims related



1 to the failure of Madison Guaranty?

2 A Well, I can't really -- there is some  
3 documentation that discusses what was going on at the  
4 time and what was found at the time. And it's  
5 difficult for me sitting here now to try to recall  
6 what all the discussions were. Did we arrive at a  
7 definitive conclusion as to whether there was a  
8 cost-effective claim to be made? I don't believe so.

9 Q Do you recall any discussions where it was  
10 discussed that it would be difficult to bring a  
11 cost-effective claim in relation to the failure of  
12 Madison?

13 A At what point in time?

14 Q Prior to the hiring of outside counsel,  
15 that would be between January and February.

16 A Oh, I had had discussions myself with  
17 people at the agency, specifically involving the fact  
18 that so many of the players, including James  
19 McDougal, had already been discharged in bankruptcy  
20 and that various other individuals had been released  
21 from claims that would be the kind of claims that we  
22 would pursue in subsequent litigation.

1 Q Okay. Did those facts, did you have  
2 discussion about those facts and how it would be  
3 difficult to bring a cost-effective claim against  
4 people related to the Madison failure?

5 A Well, there were various discussions  
6 ongoing, essentially on a weekly basis, with upper  
7 management after I was assigned to it that I was  
8 involved with, so there were constant discussions  
9 about that. There was never any decision made to the  
10 effect that there was nothing here and let's close it  
11 out.

12 Q To the extent that you can recall, what  
13 were the substance of those discussions generally?

14 A I can't recall what the substance of those  
15 discussions were.

16 Q Were there any discussions on whether it  
17 would be worthwhile to hire outside counsel  
18 considering the position of many of the people who  
19 you would have to bring claims against?

20 A Well, it was concluded that it would still  
21 be worthwhile to hire outside counsel since in fact  
22 we hired outside counsel.

1 Q Was there one person who made the decision  
2 on whether or not to hire an outside firm?

3 A Excuse me?

4 Q Was there one person or group of people who  
5 made the decision to hire outside counsel?

6 A The recommendation was made to hire outside  
7 people by staff through me, through Tom Heinz, and up  
8 to the general counsel and the CEO. The authority  
9 for hiring outside counsel was vested in what was  
10 known as the Outside Counsel Committee, which was  
11 comprised of various individuals from the legal  
12 division at the RTC contract section.

13 Q So there was a process in place for the  
14 selection of outside counsel?

15 A Correct.

16 Q Was that process followed in this instance?

17 A Yes, it was.

18 Q Was there a bidding process involved in  
19 that?

20 A Yes, there was.

21 Q How was that set up, how were firms  
22 identified to ask for bids?

1 A It was an expedited procedure. Again, you  
2 would have to look at the documentation because I  
3 don't want to trust my recollection sitting here  
4 without any of it in front of me and without having  
5 looked at it beforehand.

6 But it was on an expedited process and  
7 suggestions. It was asked of staff to come up with  
8 suggestions of outside counsel who seemed like they  
9 might be best suited for this kind of a project.

10 We then contacted orally, if memory serves  
11 me right, four firms, and described to them orally,  
12 over the phone, what the retention was for, what the  
13 Request for Proposal was for. And subsequently we  
14 faxed each of the firms conflict lists that we  
15 created internally for conflicts checks.

16 Each of the firms then responded with a  
17 written proposal. One of the firms declined to  
18 respond because of a concern that there would be a  
19 conflict of interest. So we received responses,  
20 again which are in the file, from three of the four  
21 firms that were solicited.

22 Q Okay. Did you make any recommendations for

1 the firms that were solicited?

2 A I'm sorry?

3 Q Did you personally make recommendations for  
4 firms that were solicited?

5 A Yes, I did.

6 Q What firms did you recommend?

7 A Well, I recommended Dewey Ballantine and  
8 Pillsbury, Madison & Sutro and Hopkins & Sutter,  
9 along with others who made those same  
10 recommendations. And a fourth firm was solicited as  
11 well, Baker & Botts.

12 Q Did you ask any of your staff for  
13 recommendations?

14 A Yes.

15 Q Who on the staff did you ask for  
16 recommendations?

17 A All of them.

18 Q Did anyone else on the staff recommend  
19 Pillsbury, Madison & Sutro?

20 A I don't recall. There were others who I  
21 have worked with on my staff, none of the folks that  
22 were handling Madison Guaranty, but others who I also

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18

1 approached on my team to ask if they had any ideas.  
2 And Pillsbury had worked for one of my staff members  
3 before on the case involving Governor Symington out  
4 of Arizona.

5 Q Were you personally familiar with  
6 Pillsbury, Madison at the time?

7 A Based on their work on the other case, yes.

8 Q And you worked on that?

9 A I supervised the staff attorney on that.

10 Q Who is the staff attorney you supervised?

11 A John Stewart.

12 Q Who at Pillsbury worked on the Symington  
13 case that you are familiar with?

14 A Bruce Ericson and Chuck Patterson. And the  
15 other case that Pillsbury worked on for one of my  
16 staff attorneys was the Trust Bank case.

17 Q Who on your staff worked on that case?

18 A John Stewart.

19 Q And who at Pillsbury, Madison?

20 A Jay Stephens and I believe, although I  
21 can't tell you for sure, Bruce Ericson.

22 Q And Pillsbury, Madison's performance in

- 1 both those cases were satisfactory to you?  
2 A Yes.  
3 Q The work with Ericson was satisfactory?  
4 A Yes.  
5 Q Mr. Patterson?  
6 A Yes.  
7 Q Mr. Stephens?  
8 A Yes.  
9 Q Was Mr. Stewart satisfied with  
10 Mr. Ericson's work?  
11 A Yes.  
12 Q And with Mr. Patterson's?  
13 A Yes.  
14 Q And how about with Mr. Stephens?  
15 A Yes.  
16 Q Did you personally make the phone calls to  
17 invite the firms to bid?  
18 A I believe I did, yes.  
19 Q And who did you speak with at Pillsbury,  
20 Madison?  
21 A Bruce Ericson, and in a subsequent  
22 conversation, both Bruce Ericson and Jay Stephens.
- 

- 1 Q Did you speak to Mr. Patterson?  
2 A Not when the proposals were put out, no.  
3 Q What was the conversation you had with  
4 Mr. Ericson with regard to the proposal?  
5 A A general description of the case and a  
6 time frame within which action had to be taken.  
7 Q This is before you knew the Statute of  
8 Limitations would be extended?  
9 A Correct.  
10 Q So you expected to finish up before the end  
11 of February?  
12 A I expected to do whatever could be done  
13 before the end of February.  
14 Q Okay. How about any other discussions,  
15 other than a general description?  
16 A No.  
17 Q How about with Mr. Stephens, what was the  
18 content of that discussion?  
19 A A second -- it was a phone call back from  
20 Bruce and Jay, asking some more questions about the  
21 nature of the case and the staffing that would be  
22 required.



1 Q What type of discussion did you have about  
2 the staffing?

3 A You know, I don't have a good recollection  
4 of that, except what did we know about the volume of  
5 the documents, the location of the documents, the  
6 condition of the documents, how much work had already  
7 been done by staff, what was already available  
8 insofar as describing the circumstances of the  
9 failure of Madison Guaranty, that sort of thing.

10 Q Did you talk about the political  
11 sensitivity of the case?

12 A Oh, I mean, I didn't raise it as an issue,  
13 other than that it was known by everybody in the  
14 world that it was a politically sensitive case.

15 Q But no specific discussions?

16 A I don't recall any specific discussions,  
17 except I probably did say that it was a very  
18 sensitive case and that I wanted to ensure that I had  
19 a firm on board that was going to be sensitive to  
20 doing the job as well as possible, as carefully as  
21 possible.

22 Q Okay. Did Mr. Ericson, Mr. Stephens

1 describe what role they would have if they were  
2 engaged by the RTC?

3 A It's described in the written proposal.

4 Q But with regard to the phone call.

5 A No.

6 Q Was there any discussion of Mr. Stephens  
7 participating in the Whitewater aspect of the  
8 project?

9 A I don't recall. You are getting a little  
10 bit too detailed for my recollection about the phone  
11 conversation.

12 Q Do you recall whether they discussed  
13 whether -- I know this is a while ago, just best you  
14 can answer -- whether they discussed specific areas  
15 the different lawyers would be working on?

16 A No, I don't recall that.

17 Q Did they indicate they would be the two  
18 main lawyers working on the project?

19 A I'm sorry, say again.

20 Q Did they indicate to you that Mr. Ericson  
21 and Mr. Stephens would be the two main lawyers  
22 working on the project?

1       A    I don't recall if there was anything  
2 implicated in the phone call. Again if you look at  
3 the written proposal, it should lay out what the  
4 respective tasks may be. It was clear -- and I don't  
5 know if it was clear from that conversation or from  
6 the written proposal -- that the senior partner on  
7 the matter would be Chuck Patterson; that is, the  
8 partner in charge.

9       Q    But would he do most of the day-to-day  
10 work, or would that generally fall to the more junior  
11 members of the firm?

12       A    Chuck typically did a lot of work. I knew  
13 that from the other case, but you are asking me  
14 things that I'm just not able to answer for you.

15       Q    Do you recall whether Mr. Stephens was  
16 detailed to look at issues of dealing in fraudulent  
17 conduct in connection with real estate deals?

18       A    Well, that was everything that we were  
19 looking at.

20       Q    Pulling from your memory, do you recall  
21 whether Mr. Stephens' role was identified at any time  
22 as being limited to dealing with issues involved with

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1 getting documents and information in connection with  
2 the 6(e) issues.

3       A    No.

4       Q    Was your understanding he would work on the  
5 substance of the different issues being investigated?

6       A    Yes.

7       Q    So you weren't aware of a limitation put on  
8 the subject areas that Mr. Stephens was going to be  
9 involved with; is that right?

10       A    Correct.

11       Q    I take it the initial proposal identified  
12 that Mr. Patterson, Mr. Stephens and Mr. Ericson  
13 would be the principal litigators for the matter?

14       A    It identified, yes, that Patterson,  
15 Ericson, and Stephens would be the senior partners.

16       Q    Okay.

17       A    There was one additional partner who was a  
18 real estate partner that was working on the case  
19 early on.

20       Q    Were you familiar with the reputation of  
21 Messrs. Patterson, Stephens, and Ericson at the time  
22 they were being hired?

1 A Reputation generally based upon what my own  
2 experience had been with them and the experience of  
3 my staff had been.

4 Q And I believe you stated earlier you were  
5 satisfied with the work they had done previously for  
6 the RTC?

7 A Yes.

8 Q Or actually, I believe some of the work was  
9 ongoing at this time; is that right, the Trust Bank  
10 case?

11 A At some point the Trust Bank case was  
12 thrown out on statute grounds, and I don't remember  
13 at what point in time in relation to Madison  
14 Guaranty.

15 Q Okay. I just asked you previously whether  
16 you understood whether Mr. Stephens's role was  
17 limited in any way in his participation in the matter  
18 and you said you didn't think it was; is that  
19 correct?

20 A I didn't have any understanding. You would  
21 have to give me a time frame, but I didn't have any  
22 understanding of limitation of the role, no.

1 Q Did it ever come to your attention that  
2 Mr. Stephens's role was limited at any time?

3 A It became apparent over time that Jay was  
4 working less and less on the case, but "over time" is  
5 over a long period of time.

6 Q Is it consistent with your recollection  
7 that he stopped working on the issue after January of  
8 1995?

9 A Stopped working on what issue?

10 Q Working on the project entirely.

11 A No.

12 Q I guess you don't have the benefit of some  
13 of the records we have with us here. I can represent  
14 to you that the billing records from Pillsbury,  
15 Madison indicate that Mr. Stephens didn't bill any  
16 time for work on the project after January of 1995.

17 A I don't have any recollection or knowledge  
18 of that. I thought that Jay was being copied on  
19 essentially most of the paper that was going out. So  
20 I presume he was seeing everything or saw it at the  
21 very least.

22 Q So it was your understanding he continued

1 to work on it during the course of the project; is  
2 that correct?

3 A Yes.

4 Q Have you since come to learn that he wasn't  
5 doing work on the project?

6 A Well, to the level of your emphaticness as  
7 in no work, no, this is the first time I have heard  
8 that.

9 Q Were you aware generally that his level of  
10 work dropped off at any time?

11 A I was aware of that, yes.

12 Q How did that come to your attention?

13 A Well, it was apparent from the billings as  
14 well as from the contacts that Jay was less and less  
15 involved.

16 Q Had you had previous contact with him at  
17 the beginning of the project?

18 A I had some contact with him, although my  
19 contact was generally mixed between all the people  
20 involved in the project.

21 Q You were hands-on managing the project for  
22 the RTC; is that right?

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1 A I was supervising the staff who were  
2 assigned to the case and generally involved in that  
3 capacity.

4 Q Generally who did you communicate with at  
5 the RTC -- I mean at Pillsbury, Madison?

6 A It really depended. Especially at the  
7 outset, all four partners who were on the case, as  
8 well as associates, depending upon if someone needed  
9 to call me or I needed to get some information.

10 Q Can you place in time generally when you  
11 became aware that Mr. Stephens was doing less work on  
12 the project?

13 A No, I'm afraid I can't.

14 Q Do you recall whether it was before the  
15 draft preliminary reports were put together?

16 A No, I can't. I just can't peg it to a  
17 particular point in time.

18 Q Okay. Did anyone ever raise that issue  
19 with you with regard to Mr. Stephens not playing as  
20 active a role in the project?

21 A No.

22 Q Did Mr. Igo ever mention to you that he



1 noticed that Mr. Stephens wasn't working on the  
2 project?

3 A I don't recall.

4 Q Did you have any discussions with anyone at  
5 Pillsbury, Madison about the fact that Mr. Stephens  
6 wasn't doing as much work on the project?

7 A I don't remember any specific discussions.  
8 I do remember that they were -- Jay was in the  
9 process of developing his own practice and that was  
10 keeping him very busy. That was, you know, somewhere  
11 in the faint recollection of my mind, that is the  
12 most that I can come up with.

13 Q Okay. This may help you, may help refresh  
14 your recollection. I have a deposition in front of  
15 me of Charles Patterson which occurred on May 14,  
16 1996, and I'm referring to pages 21 through 23. I  
17 will give Mr. Ivey a chance --

18 MR. IVEY: No, you can go ahead.

19 BY MR. O'CALLAGHAN:

20 Q There are some questions put to  
21 Mr. Patterson about the discussions with people at  
22 RTC about Pillsbury, Madison staffing of the matter,

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1 and he mentions that he had conversations with you.  
2 He said you were his principal contact at the RTC.

3 Then he asked Mr. Patterson on page 22, the  
4 question says, "Did you have any conversations with  
5 anyone at RTC about what role Mr. Stephens would play  
6 in connection with this project at any time?"

7 The answer is, "Yes."

8 Then the next question is, "Could you tell  
9 us about those conversations?"

10 "Answer: Essentially it was the same  
11 conversation with Mark that Jay would still -- that  
12 Jay's role was still to be in the Washington office  
13 and available for anything that needed to be done in  
14 Washington -- assuming there were matters of criminal  
15 law that became important to us in the investigation,  
16 although we couldn't see them at that point in  
17 time -- Jay would be consulted."

18 And then, page 23, just to keep it  
19 continuous, it says, "Did you have any further  
20 conversations with anyone at RTC about Mr. Stephens'  
21 role?"

22 And the answer is, "No, except the

1 understanding that Jay's role would be reduced, and  
2 John Garrett would no longer be working on the  
3 project either."

4 Do you recall any conversations, after my  
5 reading this portion of the deposition to you, any  
6 conversations you might have had with Mr. Patterson  
7 about the reduction of Mr. Stephens' role?

8 A Well, the only thing that I recall is what  
9 I previously indicated, was that my understanding,  
10 and I presume it was a conversation with Chuck or  
11 with Jay, that he was more and more involved with  
12 developing his practice out of the D.C. office, his  
13 own practice, was my understanding, and that was  
14 pulling him away from working on the project.

15 I don't recall debating with Chuck the  
16 testimony. I just don't have a specific recollection  
17 of any specific conversations with Chuck, just a  
18 general understanding.

19 Q Did it cause you any concern -- you said  
20 you had discussions with regard to Mr. Stephens  
21 developing his practice out of Washington -- any  
22 concerns about him not contributing as much to the

1 project?

2 A I didn't have any specific concerns along  
3 those lines because the work that the firm was doing  
4 was good, and nothing was deficient and nothing was  
5 lacking. If there had been any problems, then I  
6 would have raised the staffing issue, whatever the  
7 issue may have been, with Chuck Patterson, but since  
8 the work was going along, in my opinion and in the  
9 staff's opinion, as well as could be expected under  
10 the circumstances, I wouldn't phrase it as a problem.

11 Q Do you recall whether the conversations  
12 about Mr. Stephens shifting his focus to his D.C.  
13 practice, whether those occurred after there were  
14 press accounts about Mr. Stephanopoulos suggesting to  
15 Josh Steiner that efforts should be made to remove  
16 Mr. Stephens from the project?

17 A I can't place a time, although my  
18 recollection is that the whole Stephanopoulos thing  
19 was fairly early in the time frame of the RTC's  
20 investigation.

21 Q I should have asked you the predicate  
22 question. Are you familiar with the press accounts

1 with regard to Mr. Stephanopoulos's statements to  
2 Mr. Steiner?

3 A Yes.

4 Q What was your recollection of what happened  
5 there?

6 A That there were some phone conversations in  
7 which it was claimed that Mr. Stephanopoulos  
8 indicated displeasure with the RTC's retention of Jay  
9 Stephens and some discussion about whether or not  
10 anything could be done about that.

11 Q Okay. And did you have any discussions  
12 with anyone at the RTC about the comments attributed  
13 to Mr. Stephanopoulos?

14 A There was a lot of hallway conversation  
15 about it, blasted all over the newspapers the weekend  
16 that it occurred and on the subsequent days.

17 Q Didn't those statements cause some concern  
18 to people working on the project?

19 A No.

20 Q Was there ever a formal meeting set up to  
21 discuss how to handle this issue?

22 A No.

1 Q Did you have any discussions with Ms. Kulka  
2 about this?

3 A No.

4 Q How about Mr. Heinz?

5 A No. I mean, except for discussion about  
6 did you see the article or that kind of thing. But a  
7 specific discussion about reacting to that  
8 conversation or those press reports?

9 Q Yes, sir.

10 A No.

11 Q Do you have any personal knowledge of  
12 whether Mr. Stephanopoulos ever suggested to  
13 Mr. Steiner that efforts should be made to find a way  
14 to remove Mr. Stephens from the Madison project?

15 A No.

16 Q Other than press accounts, do you have any  
17 knowledge about any such conversations?

18 A No.

19 Q Was anyone at the RTC ever approached about  
20 Mr. Stephens's participation in the project by anyone  
21 in the White House or in the Administration?

22 A Not to my knowledge.

1 Q Was there ever any discussions by anyone in  
2 the RTC about making efforts to reduce the amount of  
3 work that Mr. Stephens did on the Madison project?

4 A Not to my knowledge.

5 Q Did you have any discussions with anyone at  
6 Pillsbury, Madison with regard to  
7 Mr. Stephanopoulos's comments?

8 A Not that I can recall. Well, I should say  
9 that morning the Post article reporting on that  
10 conversation, Jay called me at my home to tell me  
11 that there were a number of reporters and cameramen  
12 outside of his house, and to ask for some direction.

13 Q What specifically did he ask you?

14 A He said, "There are a number of reporters  
15 and cameramen outside of my house asking for  
16 comment. What direction could you give me?"

17 Q And did he ask directions with regard to  
18 how to deal with the press making comments?

19 A Correct.

20 Q Did he ask you about whether this would  
21 affect his role in the project?

22 A No.

1 Q That was never brought up as an issue by  
2 him?

3 A No.

4 Q Was this ever brought up as an issue by  
5 anyone at Pillsbury, Madison?

6 A Not to me.

7 Q Are you aware of whether it was brought up  
8 with anybody?

9 A No.

10 Q So you are not aware of anyone from  
11 Pillsbury, Madison questioning anyone at the RTC  
12 about whether it was appropriate to have Mr. Stephens  
13 working on this project?

14 A No.

15 Q Do you recall having any discussions with  
16 Mr. Patterson about the Stephanopoulos statements?

17 A I don't recall any discussions.

18 Q This may or may not help, I don't know, but  
19 again from Mr. Patterson's deposition, on page 30, he  
20 was asked, "Did you ever discuss the Stephanopoulos  
21 statements with anyone at the RTC?"

22 His answer is, "Probably with Mark



1 Gabrellian, I would guess, because that subject came  
2 up, and by 'that subject,' I mean simply the  
3 publicity that seemed to be swirling around the fact  
4 that Pillsbury had been hired and Jay was a partner  
5 in it."

6 Does that help refresh your recollection as  
7 to whether you even had casual conversation with  
8 Mr. Patterson on the subject?

9 A No, I'm afraid it doesn't.

10 Q So are you aware of any effect that these  
11 press accounts had on Mr. Stephens's involvement in  
12 the project?

13 A No.

14 Q Other than the phone call that Mr. Stephens  
15 made to you when the reporters were outside his  
16 house, did you have any other discussions with him on  
17 the subject?

18 A I don't recall any discussions. It's  
19 possible that in a subsequent conversation I may have  
20 said to him thank you for handling it so well, for  
21 everyone at the RTC, what he did.

22 Q Okay. Do you recall a meeting in

1 approximately March of 1994 that was held in  
2 Washington that included Mr. Stephens, Ms. Kulka,  
3 Mr. Patterson and yourself, and possibly Mr. Heinz?

4 A There were a number of meetings held with  
5 those individuals, especially early on in the process  
6 and frankly throughout the process, but I don't  
7 recall a specific meeting.

8 Q Okay. Do you recall any meeting around  
9 that time period with Mr. Stephens's role was  
10 discussed in connection with this project?

11 A No, not a meeting in which there was a  
12 specific discussion of what Jay would be working on  
13 or what his role would be. During that period of  
14 time, a lot of what Jay was doing was working on the  
15 Rule 6(e) issues for obtaining documents that had  
16 been previously requested by the grand jury down in  
17 Little Rock.

18 Q Do you recall whether during any of those  
19 meetings Ms. Kulka expressed any dissatisfaction with  
20 Mr. Stephens' work?

21 A I don't have any specific recollection of  
22 those comments. I just don't remember.

1 Q Do you have any recollection whether Ms.  
2 Kulka generally had a personality clash of any type  
3 with Mr. Stephens, or whether they got along?

4 A I have got it in the back of my mind that  
5 they were not getting along all that well, although  
6 Ellen was a very demanding person. Sometimes they  
7 are very difficult situations generally. But that is  
8 possible. I'm afraid I just can't help you beyond  
9 that.

10 Q Okay. Mr. Patterson testified in his  
11 deposition on May 14 that he had the impression that  
12 Ms. Kulka was not pleased, he guessed, about the  
13 degree of respect that Mr. Stephens was displayed to  
14 Ms. Kulka. Is that consistent with your  
15 recollection?

16 A You know, I have heard that from Jay  
17 before -- I mean, from Chuck before. And it could  
18 be.

19 Q You are not certain? I mean, is that  
20 generally consistent with how you remember their  
21 dynamics working?

22 A I suppose, although I can't tell you with

---

1 100 percent certainty.

2 Q Did you have any discussions with  
3 Mr. Patterson about Mr. Stephens and Ms. Kulka's  
4 relationship?

5 A You know, I recall at some point talking  
6 with Chuck and Chuck pointing out that one of the  
7 things that Jay had to work on was his transition  
8 from government work to private practice, and in  
9 dealing with different client personalities.

10 Q Was the specific personality he was  
11 referring to Ms. Kulka?

12 A Well, I think I spoke with generalities but  
13 I think as far as the specifics go, Ellen was one  
14 person that he was talking about.

15 Q Okay. Did Ms. Kulka ever express to you  
16 any dissatisfaction with working with Mr. Stephens?

17 A I don't remember that, any such statements  
18 made.

19 Q When you had the conversation with  
20 Mr. Patterson when he told you that Mr. Stephens was  
21 working on his Washington practice, did you express  
22 to him a desire to keep Mr. Stephens working on the

1 project?

2 A Well I haven't testified about a specific  
3 conversation, but that there was a recollection of  
4 that kind of discussion.

5 Q Okay.

6 A Beyond that, I don't remember having any  
7 specific discussion about keeping Jay on the Madison  
8 Guaranty project, since, as far as I was concerned,  
9 Jay still was on the Madison Guaranty project.

10 Q But you were aware his level of involvement  
11 had dropped off?

12 A Yes, I was aware of that and I didn't see  
13 it having any negative impact on the quality of the  
14 representation by Pillsbury, Madison to RTC.

15 Q Did you hear from anyone from PMS, RTC, or  
16 anyone else, that the reason his level of involvement  
17 dropped off was due to political pressure?

18 A No.

19 Q So are you aware of whether anyone at the  
20 RTC expressed concerns about the fact that  
21 Mr. Stephens did less and less work on the project?

22 A No.

1 Q Did Ms. Kulka have any discussions with  
2 Mr. Patterson about Mr. Stephens's role?

3 A Not that I know of.

4 Q If she had had discussions of that nature,  
5 would you have been informed of them?

6 A Likely.

7 Q Do you know or have you ever learned  
8 whether Mr. Stephens was somewhat critical of the  
9 initial draft of the report?

10 A No.

11 Q Did you ever discuss with him any drafts of  
12 the report?

13 A No. I know that Jay -- I know from Bruce  
14 Ericson that Jay had had some comments that he  
15 conveyed to Bruce on one of the earlier drafts and  
16 that Bruce had commented that he took those comments  
17 and incorporated them.

18 Q Did Mr. Ericson relate to you that  
19 Mr. Stephens had told him that he was concerned that  
20 the reports looked at transactions in isolation  
21 rather than as a pattern of activity?

22 A No.

1 Q Are you aware of any disagreements or  
2 complications between Mr. Stephens and Mrs. Kulka  
3 over the course of project?

4 A No.

5 Q I probably should have done this earlier,  
6 but could you give me a brief description of  
7 precisely what your role was in connection with the  
8 Madison project?

9 A Actually, I think I probably did discuss  
10 that to a degree; that is, as a senior counsel, my  
11 role typically was to oversee staff attorneys who  
12 were assigned to specific institutions and cases  
13 arising out of those institutions. My role  
14 consequently was a supervisory one over staff who had  
15 most of the day-to-day contact with outside counsel.  
16 I then worked with staff in formulating approaches,  
17 strategies, for investigation, litigation, settlement  
18 and trial.

19 And that was, for the most part, the way in  
20 which the Madison Guaranty case was handled, except  
21 that my involvement on a daily basis was greater, and  
22 that was something that management above me wanted;

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1 that is, they wanted me to be more involved in the  
2 case than I otherwise would be.

3 Q Okay. With regard to the instructions that  
4 were given to Pillsbury, Madison at the outset of the  
5 project, what was the primary mission that they were  
6 asked to fulfill?

7 A To ascertain as best as possible whether  
8 there were any cost-effective claims under the  
9 Completion Act that could be pursued.

10 Q And those were limited to claims arising  
11 out of intentional misconduct or fraud?

12 A Yes.

13 Q With regard to the parameters of the  
14 investigation, how were those set up?

15 A You are asking me to dig back a little more  
16 into my memory than I'm comfortable without documents  
17 in front of me, especially since I believe the file  
18 lays out in some degree of detail exactly how the  
19 investigation was conducted.

20 Q Okay. Well, with regard to the role of the  
21 RTC and Pillsbury, Madison, did Pillsbury, Madison  
22 identify what issues and transactions that they



1 wanted Pillsbury, Madison to investigate?

2 A Well, when Pillsbury, Madison started, they  
3 had the benefit of the work the staff had done  
4 beforehand to kind of get a sense as to the lay of  
5 the land. We had pretty much identified those  
6 individuals who had been discharged in bankruptcy,  
7 those individuals who had been released in  
8 litigation.

9 The initial work by Pillsbury, Madison  
10 involved very intensive document work outside of the  
11 Kansas City office to get a handle on the  
12 transactions, as well as further review of the  
13 supervisory file -- I will just continue from  
14 there -- that is to say, the Federal Home Loan Bank  
15 Board documents and the office of thrift supervision  
16 documents relating to Madison Guaranty.

17 At some point in time we had various  
18 conversations in which Pillsbury, Madison recommended  
19 a certain number of transactions to focus most  
20 heavily on, that those transactions might be -- that  
21 is to say, might be the transactions from which we  
22 could identify and formulate cost-effective claims.

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1 Q And do you recall what the reaction was to  
2 those recommendations?

3 A Positive.

4 Q Were all those adopted?

5 A Yes.

6 Q So your recollection is they were adopted  
7 across the board?

8 A Well what happened was that we focused on  
9 those -- we broke the investigation down into  
10 different components. We focused on those  
11 transactions to the greatest amount of detail; "those  
12 transactions" being the transactions involving Casa  
13 Grande and Whitewater Development Corporation, 1308  
14 Main Street transaction. Those two transactions were  
15 focused upon in greatest detail. Less detail was  
16 given to various of the other transactions, to  
17 basically complete the due diligence portion of the  
18 work.

19 In addition, on a separate track was  
20 analysis of the relationship between Whitewater  
21 Development Corporation and Madison Guaranty.  
22 Finally, there was a separate analysis pursued, an

1 across-the-board analysis, to test the hypothesis of  
2 a check kiting scheme that cut across many of the  
3 different real estate transactions that Madison  
4 Guaranty and its subsidiary had engaged in.

5 Q Were there any transactions that they  
6 identified that weren't investigated?

7 A Not that I can recall.

8 Q With regard to the information you had at  
9 the beginning of the investigation, early on, did  
10 Pillsbury, Madison give you an initial opinion as to  
11 whether or not they thought there were cost-effective  
12 claims that were available in connection with  
13 Madison's failure?

14 A There was a meeting sometime in the summer,  
15 I believe, of 1994 -- although please don't hold me  
16 to these dates because I'm guessing a little bit  
17 here -- but there was a meeting held at some point in  
18 time in which Pillsbury, Madison presented its  
19 preliminary findings on the real estate transactions.

20 Q That was in the summer of '94, you believe?

21 A I believe that, yes.

22 Q What were their initial findings?

1 A Well, the initial findings were that it  
2 appeared likely there was fraud involved in the 108  
3 Main Street transaction and in the Casa Grande  
4 transaction.

5 Q How about regard to the Whitewater/Madison  
6 issue?

7 A The Whitewater portion of the analysis was  
8 not completed at that point in time. It was not near  
9 completion at that point in time.

10 Q Were there any views given as to whether  
11 there would be cost-effective claims in that area?

12 A It was pretty clear from the dollars  
13 involved that, on its own, any claims identified out  
14 of the relationship with Whitewater would not be  
15 cost-effective.

16 Q How early on was that identified, from the  
17 start?

18 A Well, pretty early on.

19 Q Okay. Why was it decided to continue on  
20 with that investigation if that was the  
21 determination?

22 A Well, you would have to refer back to -- I

1 know that, at some point, either or both Ellen Kulka  
2 and Jack Ryan testified before, either or both of the  
3 Senate and House Banking Committees as to the  
4 Agency's determination to pursue an investigation  
5 into Whitewater. And the way I had understood it was  
6 that belief on the part of management that it was  
7 important to the RTC's credibility to conduct a  
8 thorough reinvestigation into Whitewater.

9 Q But was it your understanding, going into  
10 it, that at the beginning or near the beginning of  
11 the investigation, they pretty determined they  
12 weren't going to be able to bring a cost-effective  
13 claim in that investigation?

14 A In and of itself, the dollars, it seemed  
15 hard to be able to create a claim that was  
16 cost-effective out of Whitewater itself, unless --  
17 and this was part of our strategy -- unless you could  
18 tie anything having to do with Whitewater Development  
19 into a much broader scheme or conspiracy on the part  
20 of Madison's management. In that case, it would be  
21 possible to perhaps incorporate Whitewater into a  
22 broader case and make the entire thing

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1 cost-effective.

2 Q With regard to witnesses that were called  
3 during the investigation, were the witnesses  
4 identified by the RTC?

5 A The witnesses to be contacted?

6 Q Yes, sir, to be investigated, deposed or be  
7 sent interrogatories?

8 A No, that was pretty much the Pillsbury,  
9 Madison game plan.

10 Q Did the RTC have final say on what  
11 witnesses would or would not be called?

12 A Well, it was discussed with the RTC, but I  
13 certainly didn't presume to say call this witness and  
14 don't call that witness. I would prefer Pillsbury,  
15 Madison to conduct the investigation as best as the  
16 firm thought was necessary.

17 Q Okay. During the deposition of  
18 Mr. Stephens on May 15, 1996, Mr. Cole,, minority --  
19 I'm going to read back a portion and let me know if  
20 this is consistent with your recollection.

21 Mr. Cole asked Mr. Stephens a question  
22 which begins on page 132. The question is "Do you

1 know if that occurred here, that the client dictated  
2 to your firm what it would or wouldn't investigate or  
3 what the scope of the investigation would be?" The  
4 answer was "Well, the RTC was a pretty hands-on  
5 client."

6 "Question: But that is not my question.  
7 My question is did they, do you know that they  
8 dictated to your firm that certain things should be  
9 looked at and other things shouldn't be looked at  
10 with regard to Madison?

11 "Answer: I'm not sure how to take your  
12 word 'dictated.' There would be times when they said  
13 call these people but don't call these people, don't  
14 make this phone call until I call you. It was very  
15 close hands-on, do this but wait until we give you  
16 authority to do this. So it was a closely controlled  
17 matter from what I saw."

18 Is that consistent with your recollection  
19 as to what the relationship was in conducting the  
20 investigation?

21 A Well, I don't want to quibble with Dave's  
22 testimony, but insofar as the investigation goes, I

1 did not and my staff did not presume to second-guess  
2 what the outside counsel were discovering during the  
3 course of their investigation and the recommendations  
4 they were making to contact various witnesses. We  
5 were contacted and advised before Pillsbury would go  
6 forth and take steps that would incur expenses.

7 Q So they were required to tell you before  
8 they interviewed witnesses?

9 A Generally there was a game plan that was  
10 presented to us as a game plan they prepared. If  
11 there were additional witnesses they thought should  
12 be interviewed, they would call us up and say this is  
13 what we are thinking about.

14 Q Did you have any disagreements with them  
15 about witnesses that should be called?

16 A No, I don't recall any disagreements with  
17 what witnesses should be called.

18 Q Did they identify any witnesses they wanted  
19 to call that you recommended not be called?

20 A No, I can't recall.

21 Q With regard to witnesses, were some  
22 witnesses interviewed and some deposed?



1 A Yes.

2 Q And I take it the interviews, that was  
3 interviews that were done, they weren't done under  
4 oath; is that right? The deposition would have been  
5 interviews done under oath?

6 A That's correct.

7 Q With regard to the interviews that were  
8 done absent an oath, what determination was made to  
9 take witnesses under oath versus witnesses that  
10 weren't taken under oath?

11 A My recollection is that Pillsbury, Madison  
12 recommended to take as many of the statements as  
13 informal interviews as possible, because it could be  
14 done in a more expeditious fashion and the  
15 expectation and hope was that the witness would be in  
16 more a more relaxed statement than if a formal  
17 deposition was set up so that, A, you could do it  
18 more quickly, and less expensively, and B, might be  
19 able to get more information from the witness.

20 And then finally the witnesses would be  
21 giving a statement to a federal agency, so  
22 notwithstanding the absence of an oath, any

1 statements were taken down in one form or another and  
2 a lie would be, I believe, actionable.

3 Q Did Ms. Kulka express to you a preference  
4 for taking all the statements in depositions or under  
5 oath?

6 A I don't recall.

7 Q You don't recall her telling you that she  
8 preferred that the witnesses be deposed rather than  
9 just interviewed?

10 A No, I don't recall any such comment. It's  
11 possible, but I don't recall it.

12 Q What was your preference at the time?

13 A I thought that the advice from outside  
14 counsel was valid.

15 Q With regard to interrogatories were sent to  
16 witnesses as well; is that correct?

17 A That's correct.

18 Q And how is it determined to send  
19 interrogatories to those witnesses?

20 A How was it determined to send  
21 interrogatories?

22 Q Yes, what decision, why was it decided to

1 send them interrogatories rather than deposing them  
2 or interviewing them?

3 A Well the witnesses you are talking about  
4 are the President and First Lady, and then later,  
5 interrogatories were prepared to be sent to Chris  
6 Wade. They may even have been transmitted but I  
7 don't think they were ever answered. The reason for  
8 sending the written interrogatories to the President  
9 and First Lady was that it seemed that that was going  
10 to be the most efficient and effective way to get as  
11 much information as possible as quickly as possible.

12 From those witnesses, we did reserve our  
13 right to subsequently take oral testimony from them,  
14 and the written record should reflect that.

15 Q Is it generally your practice, though, to  
16 prefer to take interviews or depositions of witnesses  
17 you are trying to get factual testimony from?

18 A It depends. Because the questions were so  
19 document laden, this appeared to make a lot of  
20 sense.

21 Q Was that appropriate for any of the other  
22 witnesses, that you were part of the investigation?

1 A I don't know. You are getting beyond me.  
2 Frankly I don't remember if there were other  
3 witnesses beyond which I have identified that we did  
4 send interrogatories to.

5 Q Whose decision was it to send  
6 interrogatories to the Clintons rather than deposing  
7 them or interviews them?

8 A It was a joint decision. I remember at one  
9 point the General Counsel indicated that, asked when  
10 we were going to go and get statements from the  
11 President and First Lady. And there was subsequent  
12 discussion and the approach taken was to send written  
13 interrogatories.

14 Q With regard to documents that were used in  
15 the investigation, who made the determination which  
16 documents to request or to subpoena?

17 A Outside counsel.

18 Q Was the RTC involved in any of that  
19 process?

20 A In identifying specific documents, no.

21 Q How about in preparing document requests  
22 for identifying specific entities to subpoena?

1 A Oh, we probably -- the subpoenas were  
2 either signed by staff or by outside counsel. I  
3 think staff signed a good number of the subpoenas.

4 But the scope of the subpoena was done as a  
5 request for -- probably discussed with staff, but it  
6 was generally recommendation made by outside  
7 counsel.

8 Q Were there any documents that were  
9 requested that were not produced that you are aware  
10 of?

11 A We had a difficult time getting documents  
12 from Governor Tucker.

13 Q How about any difficulty getting documents  
14 from the Rose Law Firm?

15 A No. The Rose Law Firm responded to the  
16 document request. And then, if you look at the file,  
17 to the extent there were documents, that came in over  
18 time, newly discovered documents and what have you, I  
19 think that the file would probably reflect how all  
20 that transpired.

21 Q So to your recollection, there were a  
22 certain number of documents from the Rose Law Firm

1 that were produced after the return date?

2 A Oh, there were documents from various  
3 witnesses that were produced after the return dates.  
4 That was generally agreed upon between counsel and  
5 counsel for the Rose Law Firm, as well as counsel for  
6 other witnesses.

7 Q Are you aware of any documents you  
8 considered to be key documents that were withheld or  
9 otherwise not produced?

10 A Intentionally?

11 Q Let's go start with intentionally.

12 A No, I'm not aware.

13 Q How about unintentionally?

14 A No.

15 Q Or otherwise.

16 A I'm not aware of any key documents that  
17 were not produced when asked for, and we were advised  
18 when they were subsequently discovered.

19 Q I would like to take a step back to a  
20 question I meant to ask earlier with regard to the  
21 retention of Pillsbury, Madison and if I have already  
22 asked that question, let me know and you won't have

1 to answer.

2 The question is, with regard to the  
3 proposal, I asked you earlier whether the attorneys  
4 that were expected to work on the project, whether  
5 they were identified in the proposal. I believe you  
6 said they were?

7 A Yes.

8 Q Was that a factor that was considered when  
9 determining whether to hire the firm?

10 A Well, you looked at the staff and the  
11 proposal to see what, who was recommended to be  
12 placed on the retention, and yes, that did have some  
13 bearing in all instances as to whether a specific  
14 firm would be retained over another firm.

15 Q Actually, generally something the RTC looks  
16 at when they were looking at proposals; is that  
17 correct?

18 A That's correct.

19 Q Mr. Stephens was initially identified as  
20 one of the main partners working on the project; is  
21 that correct?

22 A Yes.

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1 Q Now, that changed over time; right?

2 A Yes.

3 Q While the RTC was considering whether to  
4 hire the Pillsbury, Madison firm, would that have  
5 affected their decision to hire Pillsbury, Madison if  
6 they had known that Mr. Stephens were to stop working  
7 on the project after a period of time?

8 A I don't know. I think probably a better  
9 way of asking it, if Jay Stephens was not on the  
10 original proposal, would that have affected the  
11 decision made by the RTC to retain Pillsbury,  
12 Madison. And it's difficult to say in retrospect  
13 whether it would or would not.

14 At the time it seemed that the benefit of  
15 Jay being on the team was that, as a former  
16 prosecutor, he could add a great deal of benefit  
17 through his perspective, in light of the fact that it  
18 was clearly going to be a parallel proceeding  
19 situation that we were stepping into, and that Jay,  
20 as a former prosecutor, could add a tremendous amount  
21 of perspective that would help us navigate through  
22 difficult waters where there is a parallel case. In



1 addition, it would be beneficial to have a former  
2 prosecutor on the case and interfacing with the  
3 special counsel.

4 Q And also presumably participating in the  
5 investigation; is that right?

6 A Yes.

7 Q So he was seen as a benefit, that was part  
8 of the proposal?

9 A Yes.

10 Q Okay. With regard to the actual reports  
11 that were produced by Pillsbury, Madison, did the RTC  
12 have any oversight on the production of those  
13 reports?

14 A When you say "oversight," what do you  
15 mean?

16 Q Any involvement in the writing. I wasn't  
17 trying to use a specific call word but whether they  
18 had any involvement in the drafting, editing,  
19 commenting process.

20 A Yes, we had involvement in reviewing the  
21 drafts and offering comments.

22 Q And you reviewed the drafts and made

1 comments on it; is that right?

2 A That's correct.

3 Q Who did you deal with primarily when you  
4 were engaged in reviewing the drafts, making  
5 comments?

6 A Primarily with Bruce Ericson.

7 Q Did the RTC ask to see the drafts to  
8 comment on them?

9 A Yes, as is typically the case.

10 Q With regard to comments and changes made by  
11 RTC staff, were those generally adopted by the  
12 Pillsbury, Madison firm?

13 A Oh, I can't say. Most of the comments or  
14 suggested changes, I mean, it was more comments than  
15 suggested changes generally were along the lines of  
16 helping to clarify what was being said or what was  
17 attempting to be said.

18 Q One of the initial drafts was entitled  
19 "McDougals and the Clintons, Madison Guaranty and  
20 Whitewater" and that was later changed to "Madison  
21 Guaranty Savings and Loan and Whitewater Development  
22 Company, Inc." Do you recall why that change was

1 made?

2 A I don't recall specifically why that change  
3 was made, although I think that the later title was a  
4 better title than the first title.

5 Q Was there a shift of focus during the  
6 course of the report on the role of the Clintons?

7 A Was there a shift in the focus of the  
8 report on the role of the Clintons?

9 Q Yes, sir.

10 A No.

11 Q With regard to the comments or edits that  
12 you personally made to the report, are you aware of  
13 any substantive changes that you made or suggested,  
14 rather than just style or tone?

15 A No. Substantive, as a change in  
16 conclusions, I didn't change any conclusions. Most  
17 of what I was looking for was whether what I was  
18 reading was understandable, whether you could tell  
19 that it moved from point A to point B and then  
20 finally to point C, that there was a logical  
21 connection and that it was understandable to the  
22 ordinary reader or to anyone who hadn't been very

1 heavily involved in it.

2 Q Were you aware of any edits made by any FTC  
3 staff members with regard to the substance of the  
4 report?

5 A No.

6 Q I believe Mr. Igo testified before the  
7 Committee that he made a change on a conclusion made  
8 in the report where it said there was no evidence to  
9 support a cause of action, and he, I believe,  
10 testified that there is no direct evidence to support  
11 a cause of action. Did he ever bring that to your  
12 attention?

13 A No. You are getting into an area of memory  
14 that is just not going to be very helpful at this  
15 point in time.

16 Q Okay. So you don't have any recollection  
17 of anything like that?

18 A You mean changing some wording from no  
19 evidence to no direct evidence?

20 Q Yes, sir.

21 A I don't remember. It's possible. I sure  
22 don't remember specific edits.

1 Q Do you recall whether Mr. -- withdraw that  
2 question to the extent I can on the record. I know  
3 it's printed anyway.

4 Toward the conclusion of this process, did  
5 there come a time toward the end of the process when  
6 the reports were written that you asked, you went to  
7 Mr. Stephens and asked him to review the reports?

8 A No.

9 Q Or that you made a recommendation that  
10 Mr. Stephens review the reports?

11 A That is not an accurate statement either.

12 Q Do you have any recollection of anything of  
13 this nature occurring?

14 A Yes.

15 Q What is your recollection?

16 A Toward the end of the drafting process, I  
17 asked Bruce if all the partners had had the  
18 opportunity to review what was either or about to be  
19 the final draft. I just wanted to make sure that all  
20 the partners on retention had looked at it, as  
21 opposed to something that just Bruce himself was  
22 finalizing.

1 Q Do you recall telling Mr. Igo that you  
2 thought it would be a good idea to have Mr. Stephens  
3 look at the report as well as the other partners?

4 A No. No.

5 Q When you told Mr. Ericson, you asked if --  
6 excuse me.

7 When you asked Mr. Ericson if all the  
8 partners had had the opportunity to look at the  
9 report, did you specifically identify Mr. Stephens?

10 A I don't recall if I had specifically  
11 identified Jay as opposed to Chuck, or if I said have  
12 Chuck and Jay seen the final report, or if I said  
13 let's just make sure that Chuck and Jay review the  
14 final report.

15 Q Did he tell you whether or not they had all  
16 reviewed it?

17 A Well, Bruce called back at some point in  
18 time and said that Jay felt that he could not, I  
19 don't know, pass on the report.

20 Q And did he tell you why Mr. Stephens said  
21 he couldn't pass on the report?

22 A To the best that I can recall, it was along

1 the lines that since Jay had not, he felt he had not  
2 performed the investigation himself, that he couldn't  
3 pass on the final report. I mean, I really didn't  
4 understand the point, but I just let it go.

5 Q Had anyone recommended to you that all the  
6 partners who initially identified as working on the  
7 matter review the report?

8 A No.

9 Q So that was an idea that you had on your  
10 own?

11 A Yes.

12 Q Did you further suggest to Mr. Ericson that  
13 Mr. Stephens should review the report?

14 A Did I what?

15 Q After Mr. Ericson told you Mr. Stephens had  
16 declined to review it, did you indicate to  
17 Mr. Ericson that you think that Mr. Stephens should  
18 look at it?

19 A No, I left it alone. I think I said  
20 probably along the lines of "fine."

21 Q When you had asked whether all the partners  
22 had reviewed the reports, were you under the

1 impression that Mr. Stephens was still involved in  
2 working on the project?

3 A Yes.

4 Q Did you tell Mr. Ericson that?

5 A No. I mean, I did not tell Bruce after he  
6 called back and said that Jay didn't feel he could  
7 sign off on the report or something along those  
8 lines, I really didn't, I didn't understand the point  
9 from Jay. I didn't make a big deal about it with  
10 Bruce.

11 My recollection at that point in time was  
12 that Jay was being copied. I recall that Jay was  
13 cc'd on much of the transmittal documentation. So I  
14 had been under the impression he was still seeing the  
15 various drafts.

16 Q Okay. But had you had any discussions with  
17 him about the drafts during the course of the  
18 drafting of them?

19 A Discussions with whom?

20 Q With Mr. Stephens.

21 A No.

22 Q Were you surprised when Mr. Ericson told



1 you that Mr. Stephens didn't want to or didn't feel  
2 comfortable giving his seal of approval on the drafts  
3 of the reports? Excuse me.

4 A I don't know. I don't really know how I  
5 can characterize my reaction, but it was at a time  
6 when there were a lot of things going and I really  
7 wasn't going to bother with it.

8 Q So you don't recall the reaction that you  
9 had?

10 A The reaction I had was what I told you I  
11 said to Bruce, which was "fine." I don't remember  
12 exactly what my reaction was. I mean, I think that  
13 my reaction was that I was a little uncertain about  
14 the point that Jay was making, since it wasn't my  
15 intention that all the partners review the report  
16 with an eye toward confirming every fact reported in  
17 it, but that all the partners see the final draft or  
18 what was close to being the final draft, to be aware  
19 of everything that was in the final draft.

20 Q Okay. Did Mr. Ericson express to you any  
21 response that he had to Mr. Stephens's refusal?

22 A I don't recall specifically what Bruce said

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1 to me about that. I don't think he said much of  
2 anything about it.

3 Q Did you have any conversations about  
4 whether it would be a good idea to have Mr. Stephens  
5 review the report in light of the earlier press  
6 accounts about Mr. Stephens's involvement in the  
7 project?

8 A No.

9 Q Did you review the billings that were  
10 submitted by Pillsbury, Madison on a fairly regular  
11 basis?

12 A As regularly as I could. In some  
13 instances, I reviewed them myself and passed them on  
14 to my superior for a second level sign-off. In other  
15 cases, the majority of cases, when the bills came in,  
16 I handed them out on a rotating basis to the various  
17 staff members on the team who individually reviewed  
18 them, and then I signed off as second level.

19 Q I believe most of the reports, the final  
20 reports were done in December of 1995 and a  
21 supplemental report regarding the Rose Law Firm was  
22 done in February of 1996; is that right?

1 A I will accept your dates. Sitting here now  
2 I can't remember them.

3 Q You said you finished working in or around  
4 December of '95; is that right?

5 A Yes. Well, when the RTC sun set, that was  
6 my last day of my involvement, when I went to the  
7 FDIC professional liability section. The others were  
8 assigned to Madison and I was taken off Madison.

9 Q And before you left, you sent the final  
10 report to be completed?

11 A Before I left, everything was completed  
12 except for, I believe, a report on the Rose Law  
13 Firm.

14 Q In connection with your review of the  
15 billing records, the billing records indicate that  
16 Mr. Stephens stopped billing in January of 1995.  
17 Then the reports didn't come out until December of  
18 1995. I guess my question is, did that occur to you  
19 or were you aware of that at the time you asked  
20 whether Mr. -- when you asked that all the partners  
21 review the reports?

22 A No.

1 Q You weren't aware he hadn't worked on it  
2 for almost a year?

3 A That he had not billed anything on Madison  
4 Guaranty?

5 Q Correct.

6 A No.

7 Q Would that have caused you some concern at  
8 the time if you were aware of that?

9 A If you are asking me to speculate, I  
10 can't.

11 Q It's not so much speculation, but do you  
12 have a reaction to it now?

13 A Not as I sit here right now.

14 MR. O'CALLAGHAN: Why don't we go off the  
15 record for a second.

16 (Recess.)

17 MR. O'CALLAGHAN:

18 Q I only have a few more questions,  
19 Mr. Gabrellian.

20 Were you ever aware that Mr. Steiner had  
21 indicated to Jean Hanson, the General Counsel of the  
22 Treasury, that he thought Ellen Kulka should be fired

1 for hiring Jay Stephens?

2 A No.

3 Q Have you heard press reports to that  
4 effect?

5 A No.

6 Q Is that the first time you have heard that?

7 A Yes.

8 Q Mr. Gabrellian, any time that you were  
9 working on the Madison project, did anyone at the RTC  
10 have any contacts with anyone in the White House with  
11 regard to the Madison project?

12 A I had no personal knowledge of any such  
13 contact, except for the ones that were reported in  
14 the press about Mr. Altman and the folks at the White  
15 House, but I have no personal knowledge of those,  
16 either.

17 Q And you weren't approached by anyone in the  
18 White House?

19 A No.

20 Q How about anyone in the Administration?

21 A No.

22 Q Do you recall, other than press reports,

1 what you heard, are you aware of any contacts by  
2 anyone in the Administration with anyone at the RTC  
3 with regard to the Madison matter?

4 A No.

5 MR. O'CALLAGHAN: I have no further  
6 questions at this time.

7 EXAMINATION

8 BY MR. IVEY:

9 Q Good afternoon, Mr. Gabrellian. I will try  
10 to be fairly brief because I know you have your hands  
11 full over there, but I do have a few follow-up  
12 questions.

13 With respect to Mr. Stephens's involvement,  
14 was there any political pressure that you were aware  
15 of with respect to Mr. Stephens's involvement either  
16 to have him become more involved or less involved  
17 with the investigation that Pillsbury, Madison was  
18 conducting for the RTC?

19 A No.

20 Q And I take it that you had some awareness  
21 that his work on this project decreased, but because  
22 the quality of the work remained high, you didn't

1 become overly concerned about it?

2 A That's correct.

3 Q To the best of your knowledge, was there  
4 any personal animus between Mr. Stephens and any  
5 other RTC employee that led to this reduction in his  
6 involvement in the project?

7 A No.

8 Q Was there anything about the reduction of  
9 Mr. Stephens's involvement in the project that caused  
10 you any concern or led you to feel that there might  
11 be something improper or untoward going on?

12 A No.

13 Q With respect to this issue of  
14 Mr. Stephens's reviewing the report, I take it from  
15 your testimony you were not aware that Mr. Stephens  
16 had -- well, I'm sorry, I apologize.

17 I take it you were aware that Mr. Stephens  
18 had provided some comments to Mr. Ericson with  
19 respect to preliminary drafts of the report?

20 A Yes.

21 Q And it's your understanding that those  
22 comments or suggestions were incorporated in the

1 report?

2 A Incorporated or considered, but my  
3 recollection from the discussion I had with Bruce was  
4 that Jay had given him some comments that Bruce had  
5 worked on.

6 Q All right. So I take it that you were not  
7 aware of any type of effort by Mr. Stephens to  
8 dissociate himself from this project or  
9 investigation?

10 A No.

11 Q Are you aware of anything like that at this  
12 point, have you heard anything to that effect?

13 A Not other than what the two of you seem to  
14 be suggesting through your questions.

15 Q Now, with respect to the scope of the  
16 investigation, you were asked some questions about  
17 the decision to retain counsel to handle this project  
18 for the RTC. Do you recall those?

19 A Yes.

20 Q Now, I think the thrust of what you said  
21 was that, given the short time frame that the RTC had  
22 at that point, given a fast-approaching statute of



1 limitations deadline, you thought you needed outside  
2 counsel to provide extra attorneys so you could meet  
3 the deadline; is that fair to say?

4 A That's correct.

5 Q Now, you were asked about why you did not,  
6 I guess, terminate the relationship with Pillsbury,  
7 Madison early on in the investigation. I suppose the  
8 suggestion was that after there was some  
9 consideration or some determination that there might  
10 not be cost-effective litigation involved with the  
11 investigation with respect to Whitewater Development,  
12 perhaps you should have terminated the relationship.

13 I wanted your comments on that. Why did  
14 the RTC continue to retain outside counsel on this  
15 investigation?

16 A Well, it was not concluded that no  
17 cost-effective claims could be brought arising out of  
18 the failure of Madison Guaranty. In fact, what we  
19 concluded and what formed the basis for the retention  
20 of counsel, particularly pursuant to the terms of the  
21 RTC Completion Act, was that there was a need for  
22 additional investigation and that we did not have

1 sufficient staff resources to perform that  
2 investigation, either leading up to the then-imminent  
3 statute of limitations deadline, or even after the  
4 statute of limitations deadline was extended.

5 Q So I take it there were still some  
6 outstanding issues with respect to litigation that  
7 you wanted to have investigated further?

8 A That is correct.

9 Q All right. I think you also mentioned that  
10 there was a possibility that you wanted investigated  
11 with respect to conspiracy issues --

12 A That's correct.

13 Q -- that might have made pursuit in some of  
14 these instances cost-effective?

15 A That's correct.

16 Q Now, you also mentioned something about RTC  
17 credibility. I take it by that, you mean you felt  
18 that the investigation had to be thorough and  
19 complete, or it might be subject to criticism  
20 subsequently?

21 A I think that the specific answer I gave was  
22 with respect to pursuit of the investigation phase

1 involving Whitewater Development Corporation, and the  
2 explanation that I believe was given on the record  
3 before congressional committees by the general  
4 counsel and deputy CEO, as well as the explanations  
5 given to me by my upper management, was that  
6 Whitewater Development should be thoroughly  
7 investigated, and that even though, in and of itself,  
8 it may not be a cost-effective claim to pursue, that  
9 there were issues of RTC credibility that  
10 necessitated pursuing that phase of the investigation  
11 as well as the other phases of the investigation that  
12 may, in and of themselves, lead to cost-effective  
13 claims.

14 Q As I understand it, I guess it would be  
15 that that seems to be a concern that has proven  
16 correct, since there have been some attacks on the  
17 PMS investigation for not interviewing additional  
18 witnesses and the like. But I will set that aside.

19 You also mentioned, with respect to  
20 interviews, that, in some instances, interviews were  
21 conducted in part because they were less expensive?

22 A That's correct.

1 MR. O'CALLAGHAN: Versus depositions;  
2 correct?

3 MR. IVEY: Correct.

4 BY MR. IVEY:

5 Q And was expense a concern with respect to  
6 the RTC, with respect to this investigation?

7 A It was always a concern and it was  
8 certainly a concern, expense is always a concern  
9 involving every RTC investigation, and including this  
10 one.

11 Q And my understanding would be that expense  
12 was a concern to the extent that you wanted a  
13 thorough investigation but you didn't want any waste  
14 or needless work done?

15 A I wanted to get the biggest bang for the  
16 RTC and taxpayer buck, and if scheduling interviews  
17 as opposed to depositions was one way in which to  
18 accomplish some cost savings, then I thought that it  
19 was an appropriate course to pursue.

20 Another reason to take an interview is that  
21 you would not have a witness that may possibly be  
22 hostile or prepared or just difficult to get candid

1 and open answers from. That also was consistent with  
2 the way in which RTC investigations are typically  
3 conducted, at least under my supervision.

4 Q All right. Let me move to the review of  
5 the report. You reviewed these reports, I believe,  
6 yourself; isn't that correct?

7 A Along with other staff members.

8 Q And I think you said that your concern was  
9 that you wanted it to be understandable to the  
10 ordinary reader?

11 A Yes. Well, understandable, clear, I wanted  
12 to make sure that the points being made were being  
13 made as clearly as possible, to repeat myself, yes.

14 Q Do you recall if anyone on your staff  
15 reviewed these reports who had not participated or  
16 participated closely in the investigation?

17 A None of the RTC staff participated directly  
18 in the investigation, insofar as taking witness  
19 statements and insofar as reviewing each and every  
20 document that was relevant to the investigation.

21 Q All right. So did you have -- I take it  
22 then that you did have people on your staff review

1 the report who had not participated in the  
2 investigation?

3 A Yes. Using the phrase "not participated in  
4 the investigation" is a little vague. People on my  
5 staff reviewed the reports and provided editorial  
6 comments who were not themselves involved directly in  
7 the investigation.

8 MR. O'CALLAGHAN: But they were familiar  
9 with it?

10 THE WITNESS: Again, there is a difference  
11 between the extent of involvement by the staff  
12 members in the Madison case as well as any RTC case,  
13 as opposed to the extent of involvement of the  
14 outside counsel.

15 BY MR. IVEY:

16 Q To try to nail this down, you mentioned at  
17 the beginning of your deposition that Mr. Igo,  
18 Mr. Arbit and Ms. Knashiu were the three principal  
19 attorneys on your team?

20 A Right.

21 Q Did you have anyone other than those three  
22 review the report?

1 A No. People above me reviewed the report as  
2 well.

3 Q Did any of those three review the report?

4 A My three staff members, yes; primarily Jim  
5 and Melinda.

6 Q What role did they play after the retention  
7 of outside counsel?

8 A They were all involved in different aspects  
9 of the investigation.

10 Q Did they read parts of the report that were  
11 not connected with issues that they were  
12 investigating?

13 A Well, the Whitewater Development report was  
14 one report. Jim Igo was assigned primarily to the  
15 Whitewater investigation, as well as to the Rose Law  
16 Firm investigation. Terry Arbit was assigned to the  
17 Castle Grande side of the investigation, and Melinda  
18 was used by me essentially as a floater.

19 Q And why was it important to you that the  
20 report be comprehensible to an ordinary reader?

21 A Well, I knew that people in the RTC above  
22 me, including the CEO, were going to be reviewing the

1 report so I wanted it to be comprehensible to them.  
2 I knew that there were outstanding document requests  
3 from the House Committee and presumed there would be  
4 one from the Senate Committee for copies of all of  
5 our written work product as well. So I wanted it to  
6 be as good a product as possible.

7 Q Were you satisfied with the report?

8 A Yes, I think it was very good.

9 Q Have you come across any evidence or  
10 information that would cause you to change the  
11 opinion you had of the report at the time you  
12 reviewed it?

13 A No.

14 Q Anything that would cause you to disagree  
15 or disavow any of the findings in the report?

16 A No.

17 Q To the best of your knowledge, was there  
18 any attempt to influence the findings or the  
19 conclusions of the report by anyone at the White  
20 House or any other Administration officials?

21 A No.

22 Q Are you aware of anyone at the RTC that



1 tried to influence the outcome or the findings of the  
2 report?

3 A No.

4 Q Are you aware of anything untoward or  
5 improper connected with this report in any fashion?

6 A No.

7 Q By that, I mean the production of the  
8 report, not the subject of the report.

9 A Correct. No, I do not.

10 MR. IVEY: I don't have any further  
11 questions at this time.

12 EXAMINATION

13 BY MR. O'CALLAGHAN:

14 Q Mr. Gabrellian, I have two quick  
15 follow-ups. You requested that the partners at  
16 Pillsbury, Madison including Mr. Patterson review the  
17 report. Was your purpose in having them review it to  
18 see if they found that it was comprehensible to an  
19 ordinary reader, or did you want them to review it  
20 for purposes of content?

21 A Well, I had presumed that the partners were  
22 reviewing earlier drafts and this was the coming up

1 on the last draft, so I just wanted to ensure that,  
2 in the process of turning around successive drafts,  
3 that what was going to be the last draft, that we  
4 gave everyone the opportunity at the firm to take a  
5 last look at the final draft, rather than create a  
6 situation where it appeared the client wanted to get  
7 something up to the CEO right away. This didn't give  
8 the partners a final opportunity to review the last  
9 draft.

10 Q Okay. So they were reviewing it for  
11 whether it was comprehensible or understandable to  
12 the ordinary reader; is that right?

13 A You know --

14 Q They may have been, you basically gave them  
15 a chance to sign off on the final draft?

16 A Basically I wanted to make sure everybody  
17 had taken a look at the final draft and was  
18 comfortable with it.

19 Q So they wouldn't mind having their name  
20 attached to it; is that right?

21 A Well, you mean --

22 Q The name of the firm.

1       A    Make sure that this last draft was one that  
2   they had all seen.

6       A    I mentioned that in connection with the  
7   interviews, yes.

13 A Can you ask the question again?

15 THE WITNESS: No. The strategy of  
16 interviews versus depositions versus interrogatories,  
17 whatever form discovery had taken, would be unlikely  
18 to differentiate between the various phases of the  
19 investigation or the different transactions being  
20 investigated. That rule of thumb, as far as I was  
21 concerned, applied to everything.

1 more likely to result in a cost-effective claim than  
2 another didn't affect how you conducted the  
3 investigation?

13 MR. O'CALLAGHAN: Okay. I have no further  
14 questions.

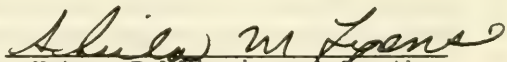
16 (Whereupon, at 4:40 p.m., the deposition  
17 was concluded.)

21  
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

89

I, SHEILA M. LYONS, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires    AUGUST 31, 1997

**DEPOSITION OF ELLEN B. KULKA  
IN RE: S. RES. 120**

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**WEDNESDAY, MAY 29, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of ELLEN B. KULKA, called for examination pursuant to notice of deposition, at 11:40 a.m. in Room 534 of the Dirksen Senate Office Building, before JANE W. BEACH, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, Esq.  
Majority Associate Special Counsel  
NEAL E. KRAVITZ, Esq.  
Minority Principal Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

MAX HIGGINS LAUTEN, Esq.  
Kramon & Graham  
Commerce Place  
One South Street  
Suite 2600  
Baltimore, MD 21202-3201  
On behalf of the Deponent.

**ALSO PRESENT: AMY R. WENDT**



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1 PROCEEDINGS  
2 COMMITTEE CONFIDENTIAL

3  
4 (11:40 a.m.)

5 Whereupon,

6 ELLEN B. KULKA

7 a previous witness in the above-entitled matter,  
8 having been first duly sworn, was examined and  
9 testified as follows:

10 MR. O'CALLAGHAN: Good morning, Ms. Kulka.

11 My name is Michael O'Callaghan. I am an Associate  
12 Special Counsel for the Special Committee.

13 With me is Neal Kravitz and Amy Wendt of  
14 the Minority.

15 This deposition today is conducted  
16 pursuant to Senate Resolution 120. This Resolution  
17 establishes a Special Committee administered by the  
18 Banking Committee to conduct an investigation  
19 involving the Whitewater Development Corporation,  
20 Madison Guaranty Savings & Loan Association, Capital  
21 Management Services, Incorporated, and other related  
22 matters.

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4

1 I am going to ask you a series of  
2 questions today. You are testifying under oath. If  
3 you do not understand the question, please let us  
4 know and I will be happy to rephrase them.

5 If you need a break at any time, just let  
6 us know.

7 Mr. Lauten: Could I make a preliminary  
8 statement?

9 MR. O'CALLAGHAN: Certainly.

10 Mr. Lauten: I just want the record to  
11 reflect that Ms. Kulka is here voluntarily, without  
12 subpoena. She is here on short notice. It has been  
13 nearly a year since she left office. She has not had  
14 an opportunity to review any of the pertinent  
15 documents concerning her testimony today.

16 MR. O'CALLAGHAN: Thank you.

17 The Court Reporter is preparing a record  
18 of the questions and answers. The deposition will be  
19 treated as Committee Confidential.

20 You will also have an opportunity to come  
21 to the Senate to review the transcript of your  
22 deposition to make note of any corrections in

1 transcription on an errata sheet.

2 In the event you cannot come down here, we  
3 will arrange to have a copy sent up to you with an  
4 errata sheet in New Jersey.

5 THE WITNESS: May I just state that there  
6 was no follow-through the last time I gave my  
7 deposition, and no copy of my transcript was ever  
8 made available, so I never was able to correct the  
9 last version that the staff prepared.

10 MR. O'CALLAGHAN: Generally our witness  
11 usually calls us and requests a copy of it.

12 THE WITNESS: We did.

13 MR. O'CALLAGHAN: Well I will make sure  
14 that I get you both of those, if that would be  
15 amenable to you.

16 THE WITNESS: Thank you.

17 MR. O'CALLAGHAN: You may be represented  
18 by counsel today.

19 Are you represented by counsel?

20 THE WITNESS: Yes.

21 MR. O'CALLAGHAN: Counsel, could you  
22 please state your name and your affiliation for the

---

1 record?

2 MR. LAUTEN: Max Lauten of the Law Firm of  
3 Kramon & Graham, P.A., in Baltimore.

4 MR. O'CALLAGHAN: Objection to the form of  
5 questions will be noted for the record.

6 Counsel may object on grounds of privilege  
7 or relevance, and the Committee Chairman may rule on  
8 objections if the witness refuses to answer a  
9 question.

10 EXAMINATION

11 BY MR. O'CALLAGHAN:

12 Q Could you please state and spell your full  
13 name for the record?

14 A My name is Ellen B. Kulka, K-U-L-K-A.

15 Q Did you speak with anyone other than your  
16 counsel prior to this deposition about the  
17 deposition?

18 A I have certainly mentioned to friends and  
19 colleagues that I was coming down to testify.

20 Q Did you have any discussions of substance  
21 in relation with the deposition?

22 A No.

1 Q Did you do anything to prepare for the  
2 deposition?

3 A Yes

4 Q What did you do to prepare?

5 A I read the transcript of the testimony of  
6 Pillsbury, Madison & Sutro before the Committee last  
7 week.

8 Q Any other preparation?

9 A No.

10 Q What is your present position?

11 A I am an attorney.

12 Q Where are you employed?

13 A I am in private practice.

14 Q And the name of your firm?

15 A Ellen B. Kulka.

16 Q What was your employment position between  
17 January of 1993 through February of 1996?

18 A My employment from January of 1994 --

19 Q Okay.

20 A -- until July of 1995 was as general  
21 counsel of the Resolution Trust Corporation.

22 Q Who did you report to at the RTC?

1 A I reported to the Acting and Deputy Chief  
2 Executive Officer of the Resolution Trust Corporation  
3 whose name was John D. Ryan.

4 Q Did you have people who reported to you?

5 A I just want to amplify my answer a little  
6 bit to that.

7 Q Sure.

8 A Before Mr. Ryan was the Acting CEO, and  
9 while he was still Deputy CEO, in the first several  
10 months of my employment I also reported to the  
11 Interim Chief Executive Officer of the RTC who was  
12 Roger Altman.

13 Q Did you have any involvement in matters  
14 related to Madison Guaranty Savings & Loan while you  
15 were there?

16 A Yes.

17 Q Did you have any role with regard to the  
18 retention of the Pillsbury, Madison & Sutro Law Firm  
19 to assist the RTC in that matter?

20 A Yes.

21 Q Who did you work with on that matter?

22 A Well, I had a staff of people.



1 I worked with my Deputy General Counsel  
2 for Litigation Andrew Tomback who really came, I  
3 think, in May of 1994 to the agency.

4 I worked with Thomas Hines, who was the  
5 Assistant General Counsel and then Associate General  
6 Counsel for Professional Liability Matters at the  
7 RTC.

8 I worked with Mark Gabrellian, who was the  
9 Senior Counsel, who really directed the day-to-day  
10 activities in the matter. And he had a staff of  
11 additional lawyers who worked for him and who  
12 involved themselves with me from time to time  
13 basically as he saw fit to bring them to meetings,  
14 and so forth.

15 Q With regard to the retention of outside  
16 counsel on the Madison matter, when was it first  
17 identified that the RTC would need to hire outside  
18 counsel in relation to this matter?

19 A The RTC routinely hires outside counsel  
20 with respect to its professional liability matters.  
21 And in this case, the matter was activated I think if  
22 not before just about the time that I came on to be

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10

1 General Counsel, and it became very clear immediately  
2 that, with what we then thought was a very short  
3 statute-of-limitations period, that we needed to  
4 retain our outside counsel early on.

5 So I would say by the end of January -- I'm  
6 not sure, it could have been the last two weeks of  
7 January -- we knew that we needed to have outside  
8 counsel.

9 Q Specifically what services were you  
10 looking for outside counsel to provide you with in  
11 relation to this matter?

12 A Well, I think the normal services that  
13 our outside counsel would perform in a  
14 professional liability matter. With respect to the  
15 specific matter, I think we had some unique  
16 requirements.

17 We needed a firm that had an  
18 extraordinarily large amount of resources both in  
19 terms of sophisticated staff and support services  
20 that could throw a lot of knowledgeable expert  
21 lawyers and backup staff into the matter because of  
22 our short deadline.

1 Q So the statute of limitations was a  
2 consideration because of the --

3 A Correct. And also because of the  
4 complexity of the issues that we identified would  
5 need to be addressed in the matter.

6 We also wanted a law firm with lawyers who  
7 had been experienced in handling complex RTC matters,  
8 and matters of great sensitivity, since this was  
9 clearly one with great sensitivity.

10 And we also thought it would be good if  
11 some part of the law firm had experience in handling  
12 matters related to grand jury proceedings and various  
13 rules that applied.

14 Q Are there any other unique requirements  
15 that you can identify?

16 A Well I think the other unique requirements  
17 are requirements that are unique to the RTC  
18 professional liability litigation. They are not  
19 unique, as I recall, to this case.

20 Q What were those?

21 A Obviously, people who had a good grasp  
22 on the case law in the professional liability area;

---

12

1 who had handled matters in not just general  
2 litigation but trial work in the area, if necessary;  
3 who could handle complex, complicated paper-trail  
4 cases.

5 I really, at this time, having not thought  
6 about it, can't think of anything else that we might  
7 have been considering them.

8 Q Okay. Prior to the hiring of outside  
9 counsel, had the RTC reached any preliminary  
10 conclusions as to whether there was a cost-effective  
11 basis to sue Madison?

12 A I really don't know how to answer your  
13 question, because we never sued Madison. Madison was  
14 gone, and I don't know what that question means.

15 Q Were there any cost-effective claims of  
16 action that would have arisen out of the failure of  
17 Madison?

18 A The RTC several years before I got to  
19 become an employee had reviewed the Madison Guaranty  
20 Professional Liability issues, as it had apparently  
21 in a number of other Arkansas-failed S&Ls. And I  
22 believe, aside from suing its accounting firm -- I

1 don't remember if it sued anybody else; it might have  
2 come to some settlement with some other people -- had  
3 determined that there were no cost-effective causes  
4 of action to be pursued.

5 Q And how was that determination made?  
6 Was that as a result of investigations  
7 that were conducted?

8 A I believe so, but I must tell you that  
9 I haven't looked at this material.

10 It happened many years before I was there,  
11 and I haven't refreshed my recollection by looking at  
12 the record, and I do not remember what the process  
13 was that was used.

14 Q Was that something that was brought to  
15 your attention when you came on board?

16 A When the investigation began, yes, we  
17 looked at the prior history of what had gone on with  
18 respect to this matter.

19 Q In light of the fact that there had been a  
20 determination made that -- other than an action against  
21 the accounting firm that you mentioned -- there had  
22 been a determination made that there were no cost-

---

1 effective claims existing, as at least an initial  
2 determination, what caused the RTC to go out and hire  
3 outside counsel to re-examine the issue?

4 A I think there were a confluence of events,  
5 the most significant one of which was the passage of  
6 the Completion Act that became effective December  
7 17th, 1993, and reopened the statute of limitations  
8 that had expired with respect to intentional wrong-  
9 doing and fraud that gave rise either to loss to the  
10 institution or unjust enrichment.

11 And there was, upon my arriving, a program  
12 instituted to review as many of the institutions upon  
13 which the statute had run as looked appropriate.  
14 Clearly the fact that the press and the -- this is hard  
15 to try to recollect this now, as I try to put this  
16 together -- the correspondence from and the public  
17 statements made by various Republican Members of  
18 Congress, correspondence directed to the Agency and  
19 public comments made with respect to the Madison  
20 Guaranty matter certainly had raised its visibility  
21 before I got there.

22 So it was clear that this was a particular

1 matter that deserved attention.

2 MR. KRAVITZ: Could I ask one follow-up  
3 question?

4 MR. O'CALLAGHAN: Sure.

5 MR. KRAVITZ: Just so the record is clear  
6 as to what you are referring to, am I correct that  
7 back in early 1994 several Republican Members of  
8 Congress were requesting the RTC to conduct another  
9 civil investigation of the failure of Madison  
10 Guaranty Savings & Loan?

11 THE WITNESS: The tone, if I recall it  
12 correctly, was more imperative than "request," but  
13 they certainly expressed a great deal of concern  
14 that the statute of limitations might run and there  
15 would be no further review of the civil liability of  
16 anyone associated with the activities at Madison  
17 Guaranty.

18 MR. KRAVITZ: So it is fair to say that  
19 several Republican Members of Congress pressured the  
20 RTC to conduct a subsequent civil investigation into  
21 the failure of Madison Guaranty Savings & Loan in  
22 light of the passage of the RTC's Completion Act and

---

1 the extension of the statute of limitations for  
2 certain limited claims? Is that fair to say? Along  
3 with the other factors that you have already  
4 mentioned?

5 THE WITNESS: I would certainly say that  
6 they made it very clear that they thought that was a  
7 very high priority for the Agency to undertake this  
8 investigation.

9 BY MR. O'CALLAGHAN: (Resuming)

10 Q So you indicated it was as a matter of  
11 interest to them -- a matter of interest to certain  
12 Members who expressed concern about it, or were just  
13 expressing a keen interest in seeing that this issue  
14 was fully investigated?

15 A I don't recall the specifics, and I  
16 would have to get the correspondence back to be  
17 able to articulate what their own expressed reasons  
18 were.

19 Q I think the record is clear on that.

20 MR. KRAVITZ: We actually wrote a whole  
21 report on it back about a year-and-a-half ago.

22 BY MR. O'CALLAGHAN: (Resuming)



1 Q At the time the Agency was seeking to hire  
2 outside counsel, or was looking into hiring outside  
3 counsel to look to see whether there were cost-  
4 effective claims relating to the failure of Madison,  
5 was a procedure in place at the Agency for hiring  
6 outside counsel?

7 A Yes.

8 Q And was that followed in this instance?

9 A To the best of my knowledge it was.

10 Q Was there a bidding process that was  
11 involved in hiring outside counsel, or a Request for  
12 Proposal sent out?

13 A Yes.

14 Q Did you have a role in sending out the  
15 Request for Proposals?

16 A I was advised by my staff of the actions  
17 they were undertaking to request the law firms that  
18 they had identified with the characteristics that  
19 they and I thought were appropriate, and they  
20 informed me at the time of the law firms -- my best  
21 recollection is that they solicited RFPs from three  
22 firms, but I never saw the paperwork and I don't have

1 a recollection precisely of how many firms. And the  
2 other firms, at this time, I can't recall other than  
3 the Pillsbury Firm.

4 Then they reported back to me with respect  
5 to what the submissions were.

6 Q And who identified the firms to send  
7 proposals to?

8 A I don't know whether it was done by Mark  
9 Gabrellian or Mark Gabrellian and Tom Hines working  
10 together, but my guess is that it's someplace between  
11 the two of them.

12 MR. KRAVITZ: Could we go off the record  
13 for one minute?

14 MR. O'CALLAGHAN: Sure.

15 (Discussion off the record.)

16 MR. O'CALLAGHAN: Back on the record.

17 BY MR. O'CALLAGHAN: (Resuming)

18 Q After the Pillsbury, Madison Firm had been  
19 chosen by the RTC, and I believe you said you were  
20 working within a compressed time period to get the  
21 work done due to the statute of limitations?

22 Is that correct?

1 A Yes.

2 Q Did there come a time when the statute of  
3 limitations was extended?

4 A Yes.

5 Q Did that change any of the requirements  
6 you had at the outset when you first hired the  
7 Pillsbury, Madison Firm?

8 A No.

9 Q In the process of hiring the Pillsbury,  
10 Madison Firm, do you recall whether the partners that  
11 were going to work on the matter were identified in  
12 the proposal that they submitted?

13 A I think they were identified. I don't  
14 remember how many people I was aware of, but it would  
15 be the practice to identify the staff you were going  
16 to use on the matter in the proposals.

17 Q Did the RTC make an evaluation of the  
18 people who were assigned to the matter as part  
19 of their calculation in deciding which firm to  
20 hire?

21 MR. KRAVITZ: Do you mean in general, or  
22 in this specific instance?

---

20

1 MR. O'CALLAGHAN: In this specific  
2 instance.

3 THE WITNESS: Yes. The staff reviewed the  
4 RFPs and the material provided by the firm, and then  
5 described to me their evaluation.

6 BY MR. O'CALLAGHAN: (Resuming)

7 Q Was part of the evaluation a consideration  
8 of what staff members from PMS were going to be  
9 working on the report, what attorneys?

10 A What is "PMS"?

11 Q Pillsbury, Madison & Sutro, excuse me.

12 A Oh, sorry. I never referred to them that  
13 way.

14 Yes.

15 Q Do you recall what comments or  
16 discussions were held with regard to the different  
17 Pillsbury lawyers that were identified to work on the  
18 report?

19 THE WITNESS: Can I go off the record a  
20 minute?

21 MR. O'CALLAGHAN: Certainly.  
22 (Discussion off the record.)

1 MR. O'CALLAGHAN: Back on.

2 BY MR. O'CALLAGHAN: (Resuming)

3 Q Did you want to say something?

4 A I just want to say that I have testified,  
5 I believe, to this matter before and I don't have as  
6 clear a recollection to the specifics as I had when I  
7 did some years ago, but I will to the best of my  
8 recollection tell you what I recall.

9 As I recall, there were a number of -- or  
10 there was more than one partner who had handled  
11 extremely complex litigation for the RTC that also  
12 was not only complex but highly sensitive; and that  
13 those partners had acquitted themselves very well in  
14 the handling of those matters so that the RTC staff  
15 felt that there was not a steep learning curve in  
16 terms of making sure that the outside law firm could  
17 meet the RTC's needs very quickly and handle the  
18 matter very effectively.

19 In addition, there was a partner who had  
20 been a former United States Attorney who could help  
21 us with our rapidly developing issues that we had  
22 with the Special Counsel Fiske in gaining access to

1 material that we had subpoenaed and that the Justice  
2 Department had subpoenaed before Mr. Fiske had  
3 arrived but which Mr. Fiske had taken custody of once  
4 he became the Special Counsel.

5 Q Is that Mr. Stephens?

6 A That's correct.

7 Q Did anyone at the RTC make any  
8 specific requests to have any particular  
9 attorneys at Pillsbury, Madison participate on the  
10 project?

11 A They could have, but I have no knowledge  
12 of that.

13 MR. KRAVITZ: What was that question? I'm  
14 sorry?

15 MR. LAUTEN: Did anyone at the RTC make  
16 any particular requests for specific lawyers to work  
17 on the project.

18 MR. KRAVITZ: Thanks.

19 BY MR. O'CALLAGHAN: (Resuming)

20 Q Are you familiar with attorneys from  
21 Pillsbury, Madison by the name of Bruce Erickson,  
22 Charles Patterson, and Jay Stephens?

1 A Yes.

2 Q Was it your understanding that those  
3 were going to be the three primary partners who  
4 were going to work on this project for Pillsbury,  
5 Madison?

6 A I don't recall what the understanding was  
7 at the time that their proposal was accepted, but  
8 they certainly became the principal lawyers working  
9 on the matter.

10 Q And once the firm had been hired and had  
11 begun work on the project, did you have an  
12 understanding as to what the role of each of those  
13 attorneys was going to be with respect to the  
14 project?

15 A I didn't have a clear division of roles  
16 between the various partners working on the major  
17 body of the work, but I did know that the  
18 Patterson, Erickson group and any other lawyers  
19 would be handling most of the matters as they had  
20 in prior cases, and that Mr. Stephens would be a  
21 useful resource in dealing with Mr. Fiske on our  
22 immediate 6(e) issue and any other similar issues

1 that arose.

2 Q Did you have an understanding as to  
3 whether Mr. Stephens was expecting you to contribute  
4 to the reports that were generated as a result of the  
5 work done by Pillsbury?

6 A At what point?

7 Q At any point.

8 A I assumed that to the extent that Mr.  
9 Stephens had important knowledge, that he  
10 contributed that knowledge to the reports and I  
11 really didn't ever ask who was really shaping the  
12 report and doing whatever. It was whomever the firm  
13 had assigned.

14 Q During the early stages of the work done  
15 by Pillsbury, were you ever advised or told that Mr.  
16 Stephens spent a lot of time reviewing documents and  
17 doing some of the investigative groundwork for the  
18 project?

19 A No.

20 Q Have you ever learned that?

21 A No.

22 Q Were you ever told that he contributed to



1 the reports that were generated by Pillsbury, Madison  
2 in this matter?

3 A Again you'd have to identify what reports.  
4 As I told you, since I left the RTC in June the final  
5 reports on the various aspects of this investigation  
6 were presented after I left, and I haven't seen them.

7 So --

8 Q With regard to any preliminary reports or  
9 drafts, were you ever told that he contributed to  
10 them or worked on them?

11 A No, but he did work on several memoranda,  
12 and I guess the resulting briefs that the RTC  
13 submitted before the Court in Arkansas to gain  
14 access to the materials that Mr. Fiske had labeled  
15 6(e) materials. So that we did have his work  
16 product.

17 Q Is that the only work product that you  
18 were familiar with?

19 A Yes.

20 Q Did there come a time when you became  
21 aware that Mr. Stephens role with regard to the  
22 Madison project had lessened, or become less

1 involved?

2 A Well it was obvious to me that he was.  
3 There were no criminal, regulatory, or rule-driven  
4 issues after the first several months and he wasn't  
5 working on anything other than that, to the best of  
6 my knowledge, so...

7 Q So there did come a time when his role  
8 became less involved -- or he became less involved, not  
9 his role?

10 A I did not know what he was doing back at  
11 the ranch. I only knew what he was presenting when  
12 he came for meetings, and he came for meetings only  
13 in those first few months.

14 I had no knowledge of whether his role  
15 remained to any extent, or diminished, other than  
16 that I wasn't aware of any particular participation  
17 because he didn't take any front role, and there  
18 was no report to me that he was doing any specific  
19 work.

20 Q Would that have been through what time  
21 period that he was involved in the meetings, that you  
22 recall?

1 A The first several months that I was at the  
2 agency would be the best that I can recall at this  
3 point.

4 Q And they were retained sometime in  
5 February of 1994?

6 A Pardon me?

7 Q Pillsbury was retained sometime --

8 A Yes. I think they may have informally  
9 been brought on before the agreement was actually  
10 signed with them, but I think the agreement was  
11 formally signed in February; but I would have to look  
12 at it to see the date.

13 Q Are you aware of whether anyone at the RTC  
14 was ever approached by anyone in the Administration  
15 about diminishing Mr. Stephens' role in the project?

16 A No.

17 Q When I say "Administration," that also  
18 includes the Department of Treasury or any other  
19 agencies.

20 Are you aware of anyone ever pushing on  
21 the RTC from other agencies, other than the White  
22 House, about diminishing Mr. Stephens' role?

1 A No. And I have testified fully about this  
2 before.

3 Q Did you ever have any discussions with  
4 anyone about a diminishment of Mr. Stephens' role in  
5 the project?

6 A With anyone at all?

7 Q Yes.

8 A No.

9 Q Did anyone at the RTC express concern  
10 about the fact that Mr. Stephens did less work on the  
11 project as the project progressed?

12 A No.

13 MR. KRAVITZ: You mean, to her knowledge  
14 did anyone at the RTC --

15 MR. O'CALLAGHAN: Well, this is -- Yes.

16 THE WITNESS: "Express concerns," I assume  
17 to me.

18 MR. O'CALLAGHAN: Yes.

19 BY MR. O'CALLAGHAN: (Resuming)

20 Q Any questions are to your knowledge. I  
21 can't ask you about what you don't know about.

22 A Right.

1 Q Did you ever hear that Mr. Stephens was  
2 critical of initial drafts of the report that were  
3 written by Mr. Erickson?

4 A Not until I read the transcript of his  
5 testimony. If you could say that his comments were  
6 critical, then that would be the "knowledge" I have,  
7 but I don't know if I would say his comments were  
8 critical or merely constructive.

9 MR. LAUTEN: And you did that over --

10 THE WITNESS: I read that testimony last  
11 night and this morning, right.

12 MR. KRAVITZ: And you are referring to Mr.  
13 Stephens' testimony before the Committee about two  
14 weeks about, a week-and-a-half ago?

15 THE WITNESS: That's correct.

16 BY MR. O'CALLAGHAN: (Resuming)

17 Q So during the course of the project, you  
18 weren't aware of any criticism that he might have had  
19 of any of the reports that were drafted or written?

20 A No.

21 MR. KRAVITZ: And don't forget that Ms.  
22 Kulka wasn't at the RTC for most of the time period

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1 that the reports were being written, or at least  
2 reviewed.

3 THE WITNESS: I think I have to correct  
4 that, because there were draft reports being  
5 generated for a long period of time before I left.

6 I did not see the versions that were the  
7 final versions, and I didn't see I think even some of  
8 them in their initial forms, but I did see a number  
9 of drafts in that period of time.

10 MR. KRAVITZ: Sorry about that.

11 MR. O'CALLAGHAN: That's why we have the  
12 witness here.

13 (Laughter.)

14 BY MR. O'CALLAGHAN: (Resuming)

15 Q Did you submit any comments or edits to  
16 any of the draft reports that you reviewed?

17 A Yes.

18 Q How would you describe the nature of the  
19 different comments and edits that you may have made  
20 to the reports, or that you did make, excuse me.

21 A Well I guess I should start with the  
22 memoranda and material that Mr. Stephens' generated.

1 Q That is the 6(e) material?

2 A That's correct.

3 Q Okay.

4 A And I was very disappointed. I thought  
5 they were extremely superficial, poorly done, and had  
6 asked for them to be redone.

7 I don't recall ultimately if I had my  
8 staff redo them because I didn't like the first or  
9 second round of them, and they also were not timely  
10 in terms of the fact that we were under enormous  
11 pressure. I didn't feel like we were getting the  
12 resources of a full-service law firm that would work  
13 night and day on them.

14 So I was somewhat distressed with that  
15 work.

16 After that --

17 Q Just if I could stop you there, and then  
18 we can move on, did you express your displeasure with  
19 the 6(e) work to anyone at the law firm?

20 A I don't have a clear recollection. I  
21 certainly do recollect discussing it with my own  
22 staff and telling them to push back and to have these

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1 materials done in a more thorough manner.

2 Q Okay. And was this before the statute of  
3 limitations ran out?

4 A Yes.

5 Q So this was in anticipation of having the  
6 statute of limitations run out; is that correct?

7 A This was anticipation of our needing to  
8 get the 6(e) materials as rapidly as possible.

9 Q Okay. And how about other comments and  
10 edits you had on the work product?

11 A I have no recollection of any specific  
12 comments on other interim types of documents that  
13 might have been prepared. There would be, from time  
14 to time, materials submitted like interrogatories.  
15 Usually I didn't look at most of that material.

16 Now in terms of the draft reports, I did  
17 read them and comment on them. And I again would  
18 need to see those reports, which I have not had an  
19 opportunity to review, to have a clear recollection  
20 of anything specific.

21 I had general issues that I raised. They  
22 may have been stylistic. There were a lot of issues



1 on clarity, and on making sure that the discussions  
2 flowed from point to point; that the materials that  
3 were being prepared by the forensic accountants were  
4 used appropriately in the reports to illustrate the  
5 text.

6 There were comments, I'm sure, about how  
7 the reports were going to be divided to deal with the  
8 different areas that we were having investigated; and  
9 there were comments that went to the fact that some  
10 of the earlier drafts -- and I don't know how the final  
11 version, obviously, appeared -- had a number of  
12 conclusory statements that were not clearly supported  
13 by the facts that were presented in the report.

14 So I recall pointing them out, as did  
15 other people at the RTC, that if those conclusions  
16 were to remain they needed to be supported by the  
17 material. That was basically the nature of the  
18 comments that I would have made -- that I recall  
19 making. There may have been others, but I really  
20 don't recall at this point.

21 Q And I realize this was awhile ago, but do  
22 you recall any of the conclusory statements that

1 stood out that you thought weren't supported by the  
2 materials?

3 A No.

4 Q Do you recall whether you reviewed an  
5 initial draft of the report that was entitled "The  
6 McDougals and the Clintons: Madison Guaranty and the  
7 Whitewater"?

8 A I don't recall reviewing a report with  
9 that title, but I could have. The report was divided  
10 into two basic areas: All of the Madison Guaranty  
11 issues that were determined to be the basis for  
12 arriving at conclusions of whether to request an  
13 authority to sue anyone for liability in general with  
14 respect to the way the Madison matters were addressed  
15 by those who had contact with it.

16 And then, those specifically relating to  
17 Whitewater Development Corporation.

18 Q To your recollection, initially was there  
19 a greater focus on the world of the Clintons with  
20 regard to their relationship with the McDougals and  
21 the Whitewater Development Corporation than the  
22 initial drafts of the reports?

1 A No, there wasn't a greater focus. There  
2 may have been a timing differential of which preceded  
3 when in terms of when the underlying information was  
4 accessible and when the material could be generated.

5 Q I would like to take one quick step back  
6 to a question I asked you earlier with regard to when  
7 you first hired Pillsbury, Madison. Did they present  
8 you with a preliminary analysis to whether they  
9 thought there were any cost-effective civil claims  
10 that would arise out of the failure of Madison?

11 A I never saw that, and I don't know if that  
12 would have been typical. I don't know how they would  
13 have done that without diving into the work and  
14 taking a look at the facts as they develop. So that  
15 would be atypical, it would seem to me.

16 Q And when they were first hired, how were  
17 the parameters of their investigation, or the work  
18 that they did, established?

19 Was that something that the RTC developed  
20 and presented to them? Or were they free to develop  
21 the investigation as they saw fit?

22 A Well it was an attorney-client

1 relationship. There was dialogue all the time, and  
2 there was very expert staff at the RTC who worked  
3 with them in developing that. So I don't know  
4 specifically on a day-to-day basis how that was  
5 shaped it, but there certainly was consensus amongst  
6 the in-house staff and outside counsel of how to  
7 proceed.

8 Q Are you aware of any instances where  
9 Pillsbury, Madison wanted to look at certain issues  
10 or transactions and they were told by the RTC not to  
11 look at those issues or transactions?

12 A Absolutely not.

13 Q With regard to which witnesses that  
14 Pillsbury, Madison either interviewed, deposed, or  
15 sent interrogatories to, who determined which  
16 witnesses would be approached and which witnesses  
17 would not?

18 A I think you would have to ask the people  
19 who worked day to day with them. There certainly was  
20 general knowledge on my part that there were certain  
21 key players as the names kept coming up, and I  
22 continuously had expressed to me the staff's attempt

1 to both outside counsel and in-house counsel to  
2 arrange for interviews and depositions of those  
3 people, and the difficulty of doing that.

4 Q Are you aware of any discussions they were  
5 having with regard to whether or not witnesses should  
6 be "interviewed" or whether they should be deposed  
7 under oath?

8 A Well I certainly pushed my staff very  
9 hard. I was very annoyed that a number of people  
10 were "interviewed" instead of deposed, so there was  
11 no sworn record.

12 I think it was more of Mr. Patterson's  
13 style. He felt he could get more cooperation from  
14 people who were not necessarily in the formal setting  
15 of a sworn deposition, but I put a lot of pressure on  
16 people to try to get as much as possible.

17 Q When you say you "put pressure on people,"  
18 would that be your own staff?

19 A Usually.

20 Q How did you express that?

21 Did you tell them, tell the Pillsbury  
22 people, that we want to depose these people --

1 A (Laughing) How did I express it? Clearly!

2 Q I have no doubt of that.

3 A I don't recall.

4 Q Did you approach anyone at Pillsbury,  
5 Madison or have any discussions with them about your  
6 desire or your preference to have sworn depositions  
7 taken?

8 A I don't recall. We met with them every  
9 several months and I don't recall if that was the  
10 direct topic of conversation between me and them or  
11 not.

12 Q After you encouraged your staff to express  
13 your opinion that depositions were favorable, do you  
14 recall what the results of those efforts were;  
15 whether they approached Pillsbury people and what  
16 effect it had?

17 A I know that they discussed with me on an  
18 ongoing basis who was being interviewed and deposed,  
19 and it didn't seem to me -- the results seemed to be  
20 perfectly normal and regular, and I don't recall -- so  
21 I assume they communicated it, and where it was  
22 possible it was done, and so on.

1 I just don't have any recollection of this  
2 being a continuing irritant, but rather a concern  
3 that we have a complete and thorough record so people  
4 couldn't change their testimony easily.

5 Q It would be tougher to do that if you were  
6 deposed under oath?

7 Is that right?

8 A Yes.

9 Q Okay.

10 I believe interrogatories were sent to  
11 some of the witnesses in connection with the  
12 investigation. Are you aware of that?

13 A Yes.

14 Q What witnesses were sent interrogatories?

15 A I really don't know, other than the  
16 Clintons. I know the Clintons were sent  
17 interrogatories, but I didn't have the day-to-day  
18 oversight over the specifics of how any particular  
19 witness's information was obtained.

20 Q And was there any discussion about -- were  
21 you aware of any discussion with regard to sending  
22 them interrogatories versus deposing them or

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1 interviewing them?

2 A Meaning the Clintons?

3 Q Yes.

4 A Yes.

5 Q And what was the content of those  
6 discussions?

7 A I think we thought it was appropriate with  
8 the level of information we had about their  
9 involvement and their position in terms of their  
10 availability and their other responsibilities, to  
11 send them interrogatories and to decide, based on the  
12 interrogatories, if we needed to have any further  
13 direct contact with them.

14 Q Whose decision was it to send them  
15 interrogatories rather than to depose them or  
16 interview them?

17 A I think it was a consensus, but ultimately  
18 it would have been my decision. I had no difference  
19 of opinion with anyone who was making that  
20 recommendation.

21 Q Had someone made that recommendation to  
22 you independent of --



1 A No, I think this was a consensus  
2 discussion with my staff, and their discussions with  
3 the Pillsbury firm. I don't recall having any other  
4 process used with this than anything else.

5 Q Was that at one specific meeting, or were  
6 these ongoing discussions?

7 A To the best of my recollection, it would  
8 have been ongoing, but I can't clearly tell you that  
9 I remember specifically a series of meetings or times  
10 when it was discussed.

11 Q With regard to those interrogatories, were  
12 you satisfied with the results of the interrogatories  
13 that came back to you?

14 A I never saw the interrogatories. They  
15 were offered to me, but I didn't get to that level of  
16 detail.

17 I definitely inquired as to whether they  
18 were the broadest, deepest, and most specific that  
19 could be posed because I thought numerous bites of  
20 the apple were probably not in the cards. I know  
21 that there was more than one occasion when questions  
22 were asked of them, but I was informed by everybody

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1 working on it that they indeed were. They were  
2 vetted thoroughly by the Pillsbury people and by my  
3 in-house staff. And when they got the responses  
4 back, I think it was shortly before I left, they  
5 thought they were quite thorough, but I really didn't  
6 see them, and I didn't use them for any extended  
7 period of time, and it was really just before, if I  
8 recall, sometime in May of '95 that the big bulk of  
9 them, if I'm correct, I could be wrong, came back.

10 Q Was there a specific staff member at the  
11 RTC that had responsibility for helping choose what  
12 witnesses would be called for interviews or  
13 depositions?

14 A That question doesn't relate to anything  
15 that is within my experience. There was a senior  
16 counsel who was in charge of this investigation, and  
17 basically in charge of the staff that worked for him,  
18 and in charge of maintaining the relationship and  
19 communication with the outside firm. That was Mark  
20 Gabrellian, and this issue would have been one of  
21 many issues.

22 There were discussions of these issues

1 regularly amongst them, I'm sure, but certainly when  
2 I had my update meetings with the staff those issues  
3 were discussed.

4 (Pause.)

5 Q With regard to this, I guess for lack of a  
6 better word, specific mission that RTC had asked the  
7 Pillsbury firm to fulfill -- I would rather have you  
8 explain what that was.

9 You told me what resources you were  
10 looking for. If you would, explain exactly what they  
11 were hired to do, and then I will ask you a follow-up  
12 question on that.

13 A They were hired to investigate on behalf  
14 of the RTC, and with the RTC's staff, any claims that  
15 could be brought with respect to any individuals who  
16 may have had liability for intentional misconduct or  
17 fraud that resulted in a loss to Madison Guaranty  
18 Savings & Loan or unjust enrichment arising out of  
19 their dealings with Madison Guaranty Savings & Loan,  
20 and to act as counsel on behalf of the RTC with  
21 respect to any of those issues.

22 Q And would you say the identification of

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1 cost-effective claims, claims where the RTC could  
2 collect money, would be one of the major issues that  
3 they were looking at?

4 A I don't know how you separate -- I don't  
5 know what -- what I stated is where I will stand on  
6 that, because I don't know how you break that down.  
7 They did what other counsel did in other matters.

8 Q Okay. I was just trying to simplify it a  
9 little bit, saying whether or not the RTC was trying  
10 to find areas where they could collect money off of  
11 lawsuits that they could enter into.

12 Is that right?

13 A Well, not necessarily lawsuits, but, yes,  
14 the RTC is a great collection agency and that was  
15 part of the Legal Division's mission.

16 Q Okay.

17 Was the RTC satisfied with the final  
18 reports that were produced by Pillsbury, Madison?

19 A I don't know.

20 Q Because you weren't there. Okay.

21 With regard to the work that they  
22 performed while you were there, were you satisfied

1 with the work that Pillsbury, Madison did for the  
2 Agency?

3 MR. KRAVITZ: Other than her comments  
4 about their work?

5 MR. O'CALLAGHAN: Other than what she has  
6 testified to, yes.

7 THE WITNESS: As a whole, yes.

8 BY MR. O'CALLAGHAN: (Resuming)

9 Q During the course of the Madison project,  
10 did you have any disagreements with Mr. Stephens at  
11 any time?

12 A Well I don't recall having any, but he --  
13 but the testimony that was given before the Committee  
14 seems to indicate that Mr. Patterson thought there  
15 might have been.

16 I was disturbed with what I perceived to  
17 be a sort of shoot-from-the-hip approach Mr. Stephens  
18 took, rather than a grounding in knowledge,  
19 researched knowledge about the legal issues that  
20 related to handling the matters, and his desire to  
21 sort of call up without preparation and just chat  
22 with, for instance, Mr. Fiske, when I wanted us to

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1 make sure that when we approached Mr. Fiske again --  
2 because I had had some conversations with him -- that  
3 we did so on a knowledgeable basis.

4 But I didn't think it rose to a level of  
5 any disagreement; just my expectations of what I  
6 expected outside counsel to do for the RTC.

7 Q And other than you said you had some  
8 problems with his shoot-from-the-hop approach, did  
9 you ever approach anyone at Pillsbury, Madison about  
10 the problems you had with that?

11 A Absolutely not.

12 Q Okay.

13 A It didn't rise to that level.

14 MR. O'CALLAGHAN: Why don't we go off the  
15 record a second?

16 (Discussion off the record.)

17 MR. O'CALLAGHAN: Back on the record.

18 BY MR. O'CALLAGHAN: (Resuming)

19 Q Ms. Kulka, do you know who Josh Steiner  
20 is?

21 A Yes.

22 Q Who is Josh Steiner?

1 A I think his most recent position in  
2 government was as chief of staff to the Secretary of  
3 the Treasury.

4 Q During the time that this project was  
5 going on, was he in that position?

6 A Yes.

7 Not for the entire time. I don't know -- I  
8 don't recall at what point Mr. Steiner left  
9 government, but I think he left government before  
10 this report was completed.

11 MR. KRAVITZ: My memory is that Mr.  
12 Steiner left government sometime in the fall of 1994.

13 BY MR. O'CALLAGHAN: (Resuming)

14 Q Okay. Were you ever told that Mr. Steiner  
15 told Jean Hansen at Treasury that you should be hired  
16 for hiring Mr. Stephens to work on the report?

17 MR. LAUTEN: Did you say "hired" or  
18 "fired"?

19 MR. O'CALLAGHAN: "Hired."

20 MR. KRAVITZ: I think you mean --

21 BY MR. O'CALLAGHAN: (Resuming)

22 Q Excuse me. Let me -- there is a hiring and

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1 a firing, so I have to make this clear.

2 Did you ever hear that Mr. Steiner told  
3 Ms. Hansen that you should be fired for hiring Mr.  
4 Stephens to work on the report?

5 A I think I heard it when it came out in  
6 either the testimony before the Senate or House  
7 Committee or the news reports.

8 Q Okay. But previous to that, you had no  
9 knowledge of that?

10 A No.

11 Q Were you aware of any criticism that you  
12 came under for the participation of Mr. Stephens on  
13 the project?

14 A Any criticism that I came under?

15 Q (Nods in the affirmative.)

16 A I think only when I heard news reports and  
17 again heard the testimony that, as I understand it,  
18 some people in the White House didn't like that  
19 decision.

20 Q Are you aware of any efforts that were  
21 made by anyone in the Administration to have Mr.  
22 Stephens removed from the project or have his role



1 diminished?

2 A Well, I'm aware of the same news reports  
3 that I discussed with you.

4 Q But while you were working on it?

5 A No one ever approached me. I was unaware  
6 of anyone at the RTC ever being approached with  
7 respect to how this matter was staffed, what law firm  
8 was hired, and which attorneys at the law firm were  
9 being used by the RTC.

10 I think you have to understand, I  
11 testified at great length, when people at the  
12 hearings, if I recall, when they said that I had  
13 hired Jay Stephens, and I say that I had hired a law  
14 firm called Pillsbury, Madison & Sutro. If you can  
15 say "I" hired anyone, the RTC did and I certainly  
16 ratified my staff's decision in hiring that law firm  
17 with whatever lawyers the law firm had identified for  
18 working on the matter.

19 Q I hope I didn't already ask this, but are  
20 you aware whether anyone at the RTC other than you  
21 was criticized by anyone in the Administration, other  
22 than press accounts, for the retention of Pillsbury,

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1 Madison and Mr. Stephens?

2 A Am I aware that they were criticized, or  
3 they were told?

4 Q The first question is criticized.

5 A No.

6 Q And whether they were directed in any way  
7 to influence Mr. Stephens' participation in the  
8 project?

9 A No.

10 Q With regard to what documents were  
11 reviewed by Pillsbury, Madison & Sutro in connection  
12 with their serving as outside counsel in this matter,  
13 who decided what documents they would review in  
14 connection with that?

15 A I assume that they and our in-house staff  
16 decided that, based on document requests, subpoenas,  
17 and other requests for information, that they made  
18 plus the examination of the existing RTC files and  
19 all of the material that the RTC had access to  
20 through its contracts with the institutions that  
21 bought defunct institutions, that the RTC had  
22 agreements about obtaining documents. So I have no

1 direct knowledge, but that was the process.

2 Q Are you aware of any entities that were  
3 subpoenaed for documents that were noncooperative  
4 during the course of the --

5 A Any what?

6 Q Any entities.

7 A Oh, yes.

8 Q Were there any entities that were  
9 noncooperative with regard to document  
10 productions?

11 A Yes.

12 Q Okay. And what entities were those?

13 A Well I don't know that I could give you an  
14 exhaustive list at this point, but I have some  
15 recollection of some.

16 Certainly the entity that -- and I can't  
17 remember its name -- that obtained the records that  
18 were the subject of the 6(e) motion stated that they  
19 had given all of their records to the FBI, basically,  
20 and we could go to the FBI for them, and they were  
21 not particularly interested in cooperating with us,  
22 even though there were agreements to provide those

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1 documents to the RTC. They just wanted to wash their  
2 hands of it.

3 But certainly --

4 Q Which entity was that?

5 A I don't know the name. It's in the record  
6 which bank it was.

7 And Jim Guy Tucker, the Governor of  
8 Arkansas, just made it very, very difficult to get  
9 any records. We went to court for those records. He  
10 fought us first in the D.C. Courts.

11 Then we removed it to Arkansas, and he  
12 fought us in Arkansas and signed a tolling agreement  
13 because he would not give us the records, and the  
14 court permitted him to defer that until after his  
15 criminal trial.

16 And there may have been others, but those  
17 are ones that stood in my mind as major issues for  
18 us.

19 Q Did you subpoena any documents from the  
20 White House in connection with the project?

21 A I don't recall if we did.

22 Q How about the Rose Law Firm?

1 A I'm sure that they did, but I don't have  
2 any direct recollection.

3 Q So you wouldn't know whether or not they  
4 were cooperative or not?

5 A The discussions I had with the Rose Law  
6 Firm was very cooperative with providing whatever was  
7 asked for, and I don't know if all of it was pursuant  
8 to subpoena or other kinds of requests.

9 Q Are you aware of any documents that were  
10 requested that were not produced?

11 A I have no specific recollection of any,  
12 other than as I've described it already.

13 (Pause.)

14 Q Okay. After the statute of limitations  
15 had been extended, were there any discussions about  
16 hiring a different law firm?

17 A No. We did change our forensic  
18 accountants to get people who were somewhat more  
19 costly but had better skills at putting all this  
20 material together, and we were very satisfied with  
21 them. But I don't recall any discussion ever coming  
22 up about changing the law firm.

1 Q Okay. Did there ever come a time that  
2 anyone at Pillsbury, Madison told you that Mr.  
3 Stephens' role was going to be diminished with  
4 respect to the project?

5 A No.

6 Q Are you aware that anyone from Pillsbury,  
7 Madison related that Mr. Stephens role was going to  
8 be diminished to anyone at the RTC at all?

9 A No.

10 It's really -- I have trouble knowing what  
11 you mean by "diminished." Mr. Stephens did the kind  
12 of work for the RTC in this matter that I believe his  
13 background suited him for, and that the proposal  
14 indicated he would be available to do, so I don't  
15 know that, I mean as far as the RTC was concerned, it  
16 was a "diminishing" of his role. He was used in his  
17 role where his background and skills were  
18 appropriate, and I don't know that there was any  
19 expectation that he would continue to do anything  
20 other than that.

21 So it wasn't -- it's odd to have the phrase  
22 "diminished." We didn't staff it. We didn't ask

1 them how they were staffing it, and our expectations  
2 in terms of the staffing were generally well met.  
3 That's my basic understanding of that.

4 Q Are you aware of any areas of  
5 investigation that may have been relevant to the  
6 inquiry that were not explored?

7 A There was an opportunity to explore dozens  
8 of various loan transactions that went bad, and the  
9 question was what was feasible, as there is in any  
10 investigation you do in any attempt to collect monies  
11 or bring charges, and the outside counsel, and there  
12 was another law firm and I'm blanking on the other  
13 law firm who worked on some of the transactions that  
14 were reviewed.

15 Q Was it Jordan, Keyes?

16 A Yes. Thank you. I feel bad having  
17 forgotten that for the moment.

18 Those law firms made recommendations after  
19 a preliminary review of the transactions they had  
20 identified after discussing that with our staff, and  
21 I think all of them having reviewed the Bank  
22 Examiner's Reports and the Garish Reports, and other

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1 things about what transactions to look at.

2 So certainly there could have been  
3 material that was relevant in other transactions, but  
4 the transactions that were the most likely to yield  
5 useful results were the ones that were identified to  
6 go forward on a consensus basis.

7 MR. O'CALLAGHAN: I have no further  
8 questions at this time.

9 MR. KRAVITZ: I have about five or ten  
10 minutes of follow-up questions. Is it okay to go  
11 ahead?

12 THE WITNESS: Please.

13 EXAMINATION

14 BY MR. KRAVITZ:

15 Q Ms. Kulka, Mr. O'Callaghan asked you some  
16 questions about your awareness that one or more White  
17 House officials might have been concerned about your  
18 decision, or the RTC's decision to retain the Law  
19 Firm of Pillsbury, Madison & Sutro to assist the RTC  
20 in investigating the failure of Madison Guaranty  
21 Savings & Loan Association.

22 When you became aware of concerns



1 reportedly voiced by White House officials over the  
2 retention of Pillsbury, Madison, did your awareness  
3 of those concerns affect your handling of the RTC's  
4 investigation in any way?

5 A No.

6 Q To your knowledge, did the awareness among  
7 staff at the RTC that White House officials had  
8 voiced concern over the retention of Pillsbury,  
9 Madison have any effect on the approach that any RTC  
10 officials took to the investigation of Madison  
11 Guaranty Savings & Loan?

12 A No.

13 Q Are you aware of any efforts by any White  
14 House official to influence the process at the RTC by  
15 which Pillsbury, Madison & Sutro was selected as  
16 outside counsel for the Madison case?

17 A No.

18 MR. O'CALLAGHAN: You said "selected"  
19 right?

20 MR. KRAVITZ: That's correct.

21 BY MR. KRAVITZ: (Resuming)

22 Q You were asked some questions about your

1 preference for sworn depositions rather than informal  
2 interviews of witnesses. I take it that's a  
3 preference you have as a general matter, not  
4 specific -- and that's not a preference that was  
5 specific to the Madison investigation?

6 A That's correct.

7 Q Did you ever express an opinion to anyone  
8 at the law firm of Pillsbury, Madison & Sutro as to  
9 which witnesses should be deposed or interviewed in  
10 the context of the Madison investigation?

11 A I don't have any recollection of doing  
12 that, but it is possible that I might have.

13 Q Are you aware of any witness that any  
14 lawyer at the Law firm of Pillsbury, Madison & Sutro  
15 wanted to interview or depose and where the RTC said,  
16 no, we don't want you to interview or depose that  
17 witness?

18 A Absolutely not.

19 Q You have been asked a number of questions  
20 on the extent of Jay Stephens' involvement in the  
21 RTC's investigation of the Madison Guaranty matter.  
22 Let me just ask you this one follow-up question:

1 To your knowledge, did anyone at the RTC  
2 take any steps to minimize or limit Mr. Stephens'  
3 involvement in this investigation?

4 A No.

5 Q To your knowledge, did any White House  
6 official or any other official of the Clinton  
7 Administration take any steps to minimize or limit  
8 Mr. Stephens' involvement in the RTC's investigation  
9 of Madison Guaranty?

10 A My knowledge is composed of public  
11 information that was available about the  
12 conversations Mr. Stephanopoulos had with Mr. Altman  
13 and Mr. Snyder. That's the only thing about which I  
14 am aware.

15 Q To the extent you're aware of the process  
16 the RTC followed in reviewing drafts of the various  
17 final reports in the Madison Guaranty matter, is  
18 there anything that was unusual or unique about the  
19 process that was used for the Madison Guaranty  
20 investigation?

21 A Yes.

22 Q What's that?

1 A In most circumstances, what is presented  
2 is a certificate -- a, excuse me, an Authority to Sue  
3 Memorandum, a request to bring suit. And in most  
4 circumstances, there aren't other reports, per se,  
5 that are generated that reach a high level with the  
6 agency -- I say most, because sometimes there are  
7 interim reports or meetings that are held on  
8 direction or partial authorities to sue.

9 In this case, we -- and I don't recall this  
10 being done at the beginning, but at some place not  
11 too far along in the process -- decided that we would  
12 be doing interim reports, certainly, and ultimately a  
13 final report. So that process itself was unusual.

14 The process of providing reports and then  
15 getting comments and revising them within the agency  
16 is not unusual at all. So that once that was decided  
17 to be the way it would go, these things were done in  
18 various draft versions and they went all the way up  
19 the line.

20 My staff would present it to their  
21 managers, and they would present it to me. I would  
22 present it to the CEO, all in different stages of

1 drafts, and there would be comments by everyone in  
2 the process, and ultimately the version would be  
3 solidified as either of the number of instances of  
4 the interim report, or the final reports that were  
5 submitted after I left.

6 Q The Committee has received testimony  
7 indicating that at some point before one or more of  
8 the final reports were issued someone at the RTC  
9 asked Jay Stephens to review one or more of the late  
10 drafts of those reports for his input.

11 In your experience as General Counsel at  
12 the RTC, is there anything unusual about such a  
13 request being made?

14 A No.

15 Q Can you tell us why you say there's  
16 nothing unusual about that?

17 A Well, I assume if you have an outside law  
18 firm with certain partners working on the matter and  
19 you want to make sure that the partners who worked on  
20 the matter agree with the report that the law firm is  
21 turning out, you want to make sure that they have  
22 their comments submitted, and they do so. I would

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1 think that would not be unusual at all.

2 Q You testified that before you left the RTC  
3 in June or July of 1995 you had an opportunity to  
4 review some drafts of some of the reports in the  
5 Madison Guaranty investigation.

6 In any of those reports, did you come  
7 across any factual findings or conclusions that you  
8 disagreed with based on your understanding of the  
9 factual record?

10 A I really can't recall at this point, I  
11 mean specifics. I'd have to look at the reports.

12 Q You don't -- nothing stands out in your  
13 memory --

14 A No.

15 Q -- as an inaccurate factual finding?

16 A No.

17 Q Are you aware of any improper or  
18 inappropriate efforts by anyone in the White House or  
19 elsewhere in the Clinton Administration to interfere  
20 with the process, the review process or the final  
21 reports in the Madison Guaranty matter?

22 A No.

1 MR. KRAVITZ: That's all I have. Thank  
2 you.

3 MR. LAUTEN: I would just like to clarify  
4 for the record, because I do not think it has been  
5 established:

6 Your last day at the RTC was June 30th,  
7 1995, but your last day on payroll was July 7, 1995;  
8 is that correct?

9 THE WITNESS: That is correct.

10 MR. KRAVITZ: Thank you. We talked about  
11 that off the record, but I think that is helpful.

12 MR. LAUTEN: And you do want an  
13 opportunity to review the transcript of your  
14 testimony and make any appropriate corrections?

15 THE WITNESS: Yes, I do.

16 MR. O'CALLAGHAN: We will make that  
17 available for you. I have no further questions.

18 THE WITNESS: Thank you.

19 MR. O'CALLAGHAN: Thank you, very much.

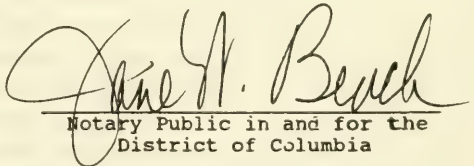
20 MR. KRAVITZ: Thank you.

21 (Whereupon, at 12:50 p.m., Wednesday, May  
22 29, 1996, the deposition was adjourned.)



CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JANE W. BEACH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires NOVEMBER 14, 1996

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## ERRATA

Deposition Transcript before  
U.S. Senate Committee on Banking  
re Whitewater  
May 29, 1996

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
9	4	Thomas Hines	Thomas Hinds	incorrect spelling
		+ all subsequent references		
46	8	"hop"	"hip"	incorrect
52	8	"if"	"it"	incorrect
53	5	under "my staff" was "char"		incorrect origin
59	13	Mr. Snyder	Mr. Steiner	incorrect spelling



**DEPOSITION OF YOLY REDDEN  
IN RE: S. RES. 120**

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**THURSDAY, MAY 30, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of YOLY REDDEN, called for examination pursuant to notice of deposition, at 1:05 p.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

JOSEPH A. JIAMPIETRO, Esq.  
Majority Counsel  
LANCE COLE, Esq.  
Minority Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

FLOYD LOFTON, Esq.  
On behalf of the Deponent.

ALSO PRESENT: STEVEN BANKLER  
JOSEPH H. POTTER  
JAMES W. PITTRIZZI, JR.



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**WITNESS****EXAMINATION**

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## PROCEEDINGS

MR. JIAMPIETRO: I want to welcome you,

Ms. Redden, today to the Senate Banking Committee.

I'm going to introduce the people around the table.

My name is Joe Jiampietro. I am Majority counsel to

the Senate Banking Committee. Accompanying me to my

right is Steve Bankler, a consultant to the Special

Whitewater Committee. To my left is deputy special

counsel for the Minority on the Special Committee,

Lance Cole. I will let Mr. Cole introduce the people

accompanying him today.

MR. COLE: Yes. With me are Joe Potter and

Jim Pittrizzi, members of the staff for the Minority

Special Committee.

MR. JIAMPIETRO: The deposition today is

going to be conducted pursuant to Senate Resolution

120. The Resolution establishes a Special Committee

administered by the Senate Banking Committee to

conduct an investigation into Whitewater Development

Corporation, Madison Guaranty Savings & Loan

Association and other related matters.

Section 1(b)(3)(A) of Resolution 120

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authorizes investigation and public hearings into the

operation, solvency and regulation of Madison

Guaranty Savings & Loan Association and any

subsidiary, affiliate or other entity owned or

controlled by Madison Guaranty Savings & Loan

Association.

Section 1(b)(3)(B) of Resolution 120

authorizes investigation and public hearings into the

activities, investments and tax liability of

Whitewater Development Corporation and as related to

Whitewater Development Corporation of its officers,

directors and shareholders.

These two areas will be the primary focus

of today's deposition. Your testimony is going to be

taken under oath, and the stenographer will prepare a

record of questions and answers. As we discussed

briefly before going on the record, a transcript of

the deposition will be made available to you for your

review. You will be able to make corrections in your

answers. You will have to return that transcript to

us and you will be asked to sign a confidentiality

agreement.

1       The transcripts will be treated as  
2 Committee Confidential until commencement of any  
3 hearings that may be held on these subjects that you  
4 are testifying on today. Whole or part of the  
5 transcripts may be made public. You may be  
6 represented by counsel, and I would like to note for  
7 the record that Ms. Redden is represented by  
8 counsel. Would you like to state your appearance?

9       MR. LOFTON: Floyd Lofton.

10       MR. JIAMPIETRO: Pursuant to the procedure  
11 set forth in Resolution 120, objections as to the  
12 form of questions will be noted for the record.  
13 There are two grounds on which counsel may object and  
14 give an instruction not to answer; privilege, scope.  
15 The Committee Chairman will rule on objections where  
16 the witness refuses to answer a question.

17       Please swear the witness in.

18       MR. COLE: Did you have a question before  
19 we proceed?

20       MR. LOFTON: That's okay.  
21 Whereupon,

22                   YOLY REDDEN

---

1       was called as a witness and, having first been duly  
2 sworn, was examined and testified as follows:

3                   EXAMINATION

4       BY MR. JIAMPIETRO:

5       Q     State your name.

6  
7       A     My name is Yoly Redden.

8  
9  
10  
11  
12       Q     What is your occupation?

13       A     I am a CPA.

14       Q     Could you please give us a brief  
15 description of your education, degrees received.

16       A     Yes. I have a bachelor's degree in  
17 business education from East Central University in  
18 Oklahoma. I have a master's degree in accounting  
19 from the University of Oklahoma. That's basically as  
20 far as degrees. Do you want experience?

21       Q     Are you a CPA, certified public accountant?

22       A     Yes.

1 Q In which states?

2 A In the state of Arkansas.

3 Q Why don't you briefly describe your work  
4 history from the time you first became an accountant  
5 to the present time.

6 A I worked for -- after I graduated, after I  
7 got a master's degree in accounting I went to work  
8 for IRS as a revenue agent. I worked for IRS in  
9 Oklahoma City and in Little Rock for about seven  
10 years. I left IRS, I was a senior revenue agent when  
11 I left IRS, and I went into private practice, started  
12 my own company. And in 1992 I merged with this other  
13 company that I am with, Brown, Rogers & Company, and  
14 I have been in public accounting since 1980. Prior  
15 to that, I worked for IRS.

16 Q I was just wondering if you could give us  
17 the date when you started your own company.

18 A In 1980. I left IRS in the spring of 1980.

19 Q What was the name of that company?

20 A Redden & Company CPAs.

21 Q And what was your role in the company?

22 A I owned the company and of course I was the

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8

1 managing partner and just, I guess, supervised  
2 various people in the company and also did work as a  
3 public accountant.

4 Q Just to clarify, you ended your  
5 relationship with the company in 1992?

6 A No. I closed the company and I took my  
7 clients to Brown, Rogers & Company. It was a small  
8 company. I had a staff of about three full-time and  
9 at least one part-time person during the regular time  
10 and then finally at least as many as three part-time  
11 people in addition to three full-time in addition to  
12 myself.

13 MR. COLE: Was all of your work experience  
14 after you left the IRS in Little Rock?

15 THE WITNESS: Yes.

16 BY MR. JIAMPIETRO:

17 Q Were there any other partners in your firm?

18 A No.

19 Q Have you had any prior interviews or  
20 depositions by law enforcement authorities with  
21 regard to Whitewater Development Corporation?

22 A Interviews, yes, with the Independent



1 Counsel last fall. I don't think it was a  
2 deposition. I think it was just strictly an  
3 interview.

4 Q It was one interview?

5 A Just one.

6 Q Have you had any discussions with anyone  
7 about Whitewater Development Corporation after that  
8 interview, prior to this deposition?

9 MR. COLE: Perhaps other than her counsel.  
10 You are not going to inquire into discussions she had  
11 with her own counsel.

12 MR. JIAMPIETRO: Absolutely not.

13 BY MR. JIAMPIETRO:

14 Q Any other discussions or interviews with --

15 MR. LOFTON: Substantive discussions or  
16 casual that has been talked at Little Rock?

17 BY MR. JIAMPIETRO:

18 Q Substantive discussions discussing your  
19 deposition today or your testimony you are going to  
20 give today.

21 A None at all.

22 MR. JIAMPIETRO: Mr. Cole, do you have any

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10

1 questions?

2 MR. COLE: No.

3 BY MR. JIAMPIETRO:

4 Q I would like to move on and briefly discuss  
5 and ask you some questions with regard to your  
6 relationship to the Clintons.

7 A Uh-huh.

8 Q When did you first meet the Clintons?

9 A I met Mrs. Clinton when I -- sometime  
10 around 1984, I believe. The only reason I think that  
11 is -- it could have been 1983, I doubt it. I believe  
12 it was probably 1984. She was representing one of my  
13 clients in a divorce case. In that process, I worked  
14 with her in the case. When the case was ended, she  
15 asked me to begin doing their work. But the case  
16 probably lasted six-months to a year. I cannot  
17 remember how long. Since the first year I did their  
18 work, the tax return for 1984, which would have been  
19 in 1985, I don't remember exactly when I started  
20 doing the work. My files will reflect that -- the  
21 1984 tax file would reflect the very first day that  
22 the work was done.

1 MR. COLE: When Ms. Clinton initially asked  
2 you to do accounting work for her, was the work you  
3 were asked to do limited to preparation of tax  
4 returns?

5 THE WITNESS: Yes, preparation of tax  
6 returns. She told me she had somebody else and she  
7 was wanting to change and wanted me to do their tax  
8 return for that year. That's the first time that I  
9 was hired to do that.

10 MR. COLE: Thank you.

11 BY MR. JIAMPIETRO:

12 Q Did she discuss with you the reason for  
13 changing?

14 MR. LOFTON: Let me interpose an  
15 objection. I think that would be outside the scope  
16 of the inquiry, why people change professional  
17 associations with people. That is really not  
18 relevant, is it?

19 MR. COLE: We could perhaps ask the  
20 question in a way that would be within the scope of  
21 the Resolution. We could ask if it had anything to  
22 do with Whitewater Development Corporation or matters

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12

1 relating to Whitewater Development Corporation.

2 THE WITNESS: Not at all. I never heard of  
3 Whitewater Development Corporation at that time, no.

4 MR. LOFTON: Thank you.

5 THE WITNESS: I was just asked to -- she  
6 wanted to change accountants and needed somebody to  
7 prepare the tax returns, would I be interested. She  
8 wanted to -- she told me she waited until we had  
9 completed the other work. She didn't ask me until we  
10 were finished with that other work.

11 BY MR. JIAMPIETRO:

12 Q What years did you prepare the Clintons'  
13 personal tax returns?

14 A I believe 1984 was the first year. Is  
15 there any way that I can verify that?

16 Q Yes.

17 A Would you check and see what was the first  
18 year? I think the first tax return I prepared was  
19 for the '94 tax year.

20 MR. COLE: You mean '84, do you not?

21 THE WITNESS: '84. I believe that --

22 BY MR. JIAMPIETRO:

1 Q I will show you a copy Bates stamped LP  
2 007740, which is the 1984 personal income tax return  
3 for William J. Clinton and Hillary Rodham.

4 A Right. There have been some work papers or  
5 something attached to it that would reflect the date,  
6 because, see, this was dated that we completed on  
7 April 13, 1985. And so the work papers may reflect  
8 if I started the work during 1985, just prior to  
9 this, or whether it would have been in late 1984. I  
10 doubt it. It most likely would have been in '85, but  
11 I do not remember.

12 Q That's fine. Understanding that you  
13 started working for them sometime in late 1984 or  
14 early '85 is a clear enough understanding of the time  
15 frame.

16 And the last return that you prepared for  
17 them?

18 A 1992.

19 Q Could you briefly describe how you would go  
20 about preparing the Clintons' personal tax returns.  
21 By that I mean the types of records you would gather  
22 from them.

1 A The same as any other clients.

2 Q The amount of meetings you would have with  
3 them?

4 A The same as any other clients.

5 Q Could you briefly describe that.

6 A I cannot tell you exactly what happened in  
7 the Clintons' return. I can tell you what happened  
8 in the very last one that I prepared because it was  
9 different, you know. It was a tax return for a  
10 President. Before that it was not. But typically  
11 what my office back then and my office now does, a  
12 CPA firm, is we send out organizers to clients to  
13 help the clients compile the information. That was  
14 not from the very beginning. That is with the advent  
15 of computers we are doing that now. Probably first  
16 few years that was not the case. We send out now  
17 organizers to the clients.

18 The clients can either complete the  
19 organizers, putting down the information in the  
20 organizer, or if they don't want to complete the  
21 organizer, they can attach records to the pertinent  
22 pages. Some clients mail it and we never see the

1 client. Some clients bring it over and they may have  
2 a few questions.

3 Before organizers, people just got their  
4 records together, whether it would be actually giving  
5 us actual records or just a list of the information.  
6 When you prepare a tax return, you are not doing an  
7 audit, so you are not required at all to look at the  
8 actual documentary evidence unless something is just  
9 unreasonable or just totally out of line. Then you  
10 can ask the clients questions. That's typically how  
11 it is done.

12 Q Specifically with regard to the Clintons,  
13 what types of documents would you normally have  
14 received from them, either requested on the  
15 questionnaire or you may have requested specifically  
16 from them?

17 A The questionnaires do not request for any  
18 specific documents. The questionnaire only asks for  
19 the client to complete any information that applies  
20 to them as to whether they have all kinds of incomes,  
21 wages, interest, dividends, any sales of property,  
22 anything like that and all kinds of deductions.

---

1 I mean, just anything that applies --  
2 anything that is income under the law, which anything  
3 anybody receives unless it is a gift or a loan or  
4 something like that, is in the questionnaire. Then  
5 anything that is a potential deduction. The general  
6 basic things are in those questionnaires.

7 Now, initially when I was preparing their  
8 tax returns, we were not using questionnaires for  
9 clients. Back then most CPAs probably would not have  
10 been using questionnaires. During the last few  
11 years, probably the last seven to 10 years, with the  
12 advent of computers, we are using questionnaires  
13 prepared by computers.

14 Initially really we just tell the client  
15 that anything that is not a gift or -- if the client  
16 would ask what to give, anything that is not a gift  
17 or a loan is income, and so give us the information  
18 whether they want to give us the documentary evidence  
19 or just want to make a list of it.

20 Most clients do not give us documentary  
21 evidence. They just make a list of the information.  
22 I think if you go into some of the work papers from



1 way back, you will find lists that we received from  
2 the Clintons of information.

3 Initially when we started preparing their  
4 tax returns, they were a lot simpler than later on,  
5 like several years later. So they were very basic  
6 information, like what they had was wages. I can't  
7 remember if there was interest income or dividends  
8 and just standard deductions, very basic.

9 Q With regard to deductions, would you have  
10 received from the Clintons canceled checks?

11 A No, not at all.

12 Q Receipts?

13 A No.

14 Q Bank statements?

15 A No, not at all. You are talking about an  
16 audit. Tax preparers do not perform an audit.

17 Q I understand in some cases there may be a  
18 question raised as to a particular deduction or the  
19 appropriateness of a particular deduction, in which  
20 case an accountant might ask the client for certain  
21 information, including a canceled check or a bank  
22 statement to discuss that deduction.

1 A Right. Usually most of the time -- any  
2 time that that is raised, we are talking mostly with  
3 travel and entertainment expenses or anything like  
4 that where the expenses are unusually high or where a  
5 taxpayer may have very little income and these  
6 gigantic losses or something like that. We may ask a  
7 client. But when something is reasonable, there is  
8 no reason to ask the client.

9 Q When did you first learn of the Clintons'  
10 investment in the Whitewater Development Corporation?

11 A What I remember, and I remember when I was  
12 interviewed by the Independent Counsel's office, when  
13 I remember learning about Whitewater was sometime in  
14 late '89 or 1990. You can -- probably it would be a  
15 good idea to look at the file. There was a letter  
16 from the IRS that Mrs. Clinton sent to me where IRS  
17 was asking for delinquent returns for Whitewater. Is  
18 anybody very familiar with those files? Because I  
19 haven't looked at those files in ages.

20 Q I don't think we have a copy of that letter  
21 either.

22 A Because I mean I'm hoping you all are real

1 familiar with the files, because I mean when I met  
2 with the Independent Counsel's office, they had all  
3 kinds of documentations that they asked me on. From  
4 that I'm recollecting some things, because I haven't  
5 looked at those records in ages.

6 MR. COLE: I think Mr. Bankler spent a fair  
7 amount of time looking at the Whitewater documents.  
8 I'm sure he could help us out.

9 THE WITNESS: So somebody please help. The  
10 first time that I saw anything connected with  
11 Whitewater -- and when I say that, books,  
12 documentation of any kind in connection with  
13 Whitewater, was probably 1990. And I would like for  
14 you all to double-check that. It is whenever we  
15 started preparing those returns. Okay?

16 BY MR. JIAMPIETRO:

17 Q Let me make a quick comment.

18 A Yes.

19 Q And a clarification. I'm going to ask you  
20 some broad general questions to see if you have any  
21 specific memories or general memories regarding these  
22 matters.

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20

1 MR. LOFTON: Do you remember that letter --

2 THE WITNESS: Let me clarify something  
3 else.

4 BY MR. JIAMPIETRO:

5 Q As we move on, we are going to show you  
6 some documents. So if you don't have a specific  
7 recollection or if you have a general recollection,  
8 just clearly state that, and as we go on, you might  
9 see documents which clarify or refresh your memory  
10 and you can give us some more specific recollection  
11 as you review those documents. But I wanted to ask  
12 you some broader questions.

13 MR. COLE: The other thing you should  
14 understand, Ms. Redden, is that we are not in any way  
15 trying to trap you or test your memory here. If you  
16 give us a date and that is your best recollection and  
17 we have a document that is contrary, we will show it  
18 to you. We are not trying in any way to make this  
19 difficult for you.

20 THE WITNESS: The main thing I want to say  
21 is this: Sometime in '89 or '90, I know that the tax  
22 returns were prepared in '90 -- the Whitewater tax

1 returns that my company prepared were prepared in  
2 1990, sometime around the summer or so of 1990, if I  
3 remember correctly.

4 I cannot remember, and of course the tax  
5 returns were prepared by us, because Mrs. Clinton  
6 sent us a letter from IRS requesting one or two years  
7 delinquent returns, and I responded to the letter and  
8 we started trying to -- Mrs. Clinton and our office  
9 both, I believe at first Mrs. Clinton, started trying  
10 to get the records. I had never seen anything like  
11 Whitewater before.

12 Now, I want to clarify something on that,  
13 when I say that is the first time that I ever saw  
14 anything about Whitewater. Sometime in 1988, and the  
15 reason I remember some of these things is mostly from  
16 the paper and various reports that various people  
17 have done in connection with Whitewater, which I had  
18 nothing to do with. There was something in one  
19 report that has come out lately that I saw a copy not  
20 long ago in connection with the people that were  
21 hired to review the Clintons and Whitewater or  
22 something. They mention they put in there a letter

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1 from Mrs. Clinton to me in November of 1988, and the  
2 letter had to do something about Whitewater.

3 But that had to do in that letter I  
4 think --

5 BY MR. JIAMPIETRO:

6 Q Before you go on, I have a copy of that  
7 letter.

8 A Good, because I would --

9 Q It is Bates stamped 133-00006593.

10 A Okay, good.

11 Q It is a letter from Hillary Rodham Clinton  
12 to you dated November 7, 1988.

13 A I have it.

14 Q Why don't you take a moment to review the  
15 letter.

16 A Okay, yes. That's the one I was talking  
17 about.

18 (Witness examined the document.)

19 THE WITNESS: Okay. When I was talking --  
20 when I was interviewed by the Independent Counsel, I  
21 didn't even recall this letter. And the reason for  
22 that is because I don't -- if Mrs. Clinton and I had

1 talked, if she had talked to me something about  
2 Whitewater, it may have been shortly before this. We  
3 always did projections for them toward the end of the  
4 year because they had a lot of charitable  
5 contributions and they wanted to maximize, be sure to  
6 make the charitable contributions in the proper  
7 year.

8           So we did projections toward the end of the  
9 year to make sure that they pay all their taxes and  
10 to see any advantage that we could take of any other  
11 potential tax savings that we could take by any  
12 planning by year end, which we do for a lot of  
13 clients.

14           In this letter she is telling us about this  
15 lot that was sold, and so we needed to consider that  
16 for the projections. What she is saying in here, in  
17 the last few weeks some developments have occurred  
18 regarding Whitewater estates. If I knew anything  
19 about Whitewater, it may have been shortly before the  
20 letter, she may have told me about it in connection  
21 with the sale of that lot, but I never saw anything  
22 in connection with Whitewater except for whatever

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1 information had to do with the sale of that lot that  
2 she had.

3           I did not -- anything she needed to do in  
4 order to maximize what her personal tax advantage,  
5 that really as far as I remember it, we took that  
6 into consideration just as strictly for their general  
7 tax planning, projections, but I never saw any  
8 records. This letter, like I said, I didn't even  
9 remember it, because there was nothing that happened  
10 that I was given or saw or really learned anything  
11 about Whitewater.

12           When I learned about Whitewater again in  
13 connection with the tax returns, it was like a  
14 brand-new thing to me, because nothing was done other  
15 than the sale of that lot, and I didn't have any  
16 details. I don't know that Mrs. Clinton was really  
17 knowledgeable about Whitewater at the time, because  
18 whatever information I was given was very little.

19           Q   Let me ask you some questions relating to  
20 this document.

21           A   Uh-huh.

22           Q   When you first learned of Whitewater, would



1 it have been in a meeting or a telephone conversation  
2 with Hillary Clinton?

3 A It probably would have been a telephone  
4 conversation. I did not meet with Mrs. Clinton very  
5 many times. Very, very few times.

6 MR. COLE: I would ask, Ms. Redden, and I'm  
7 sure Mr. Jiampietro would agree with this, that we be  
8 very careful on these points to distinguish between  
9 what you actually remember, have a present  
10 recollection of and can testify to, and what you are  
11 guessing or speculating on based on your normal way  
12 of doing business. I want you to answer these  
13 questions as fully as you can. But we really don't  
14 want any speculation on this record.

15 THE WITNESS: I really don't remember a  
16 meeting with Mrs. Clinton about Whitewater where I  
17 learned anything about it. I remember a meeting with  
18 Mrs. Clinton about Whitewater after we did the tax  
19 returns and after we looked at some additional  
20 records. We did the tax returns, like I said, in  
21 1990. And sometime, six months to a year after that,  
22 Mrs. Clinton was able to get some additional records

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1 from the accountant of the corporation that we did  
2 not have at the time that we prepared the tax  
3 returns.

4 When we prepared the tax returns, if I  
5 remember correctly, it was several months trying to  
6 obtain records. I remember that the accountant from  
7 Whitewater, Mr. James, brought some records to my  
8 office. I never met him. He didn't give them to  
9 me. He worked with another CPA in our office. But  
10 he brought some records. I remember the other CPA, I  
11 did not go over the box of records, this other CPA in  
12 our office did. Most of them -- I did not do work  
13 like going over a whole bunch of records and  
14 preparing work papers. I did the more specialized  
15 work like actually researching or giving an opinion  
16 or meeting with clients or things like that or  
17 representing clients before IRS or any other  
18 government agencies.

19 So at some point in time Mr. James, the  
20 accountant, brought some records to our office. But  
21 they were very incomplete. The accountant that  
22 looked at the records informed me that we really

1 didn't have enough to prepare the tax returns. So we  
2 informed, I informed Mrs. Clinton of that and told  
3 her we needed some additional records. So we were  
4 told to try to get the records ourselves, I believe,  
5 from the bank, some bank, and I don't remember the  
6 name of the bank because it seems to me like when we  
7 got those records, there was one or two banks that  
8 changed names two or three times. Like I said, I did  
9 not review the records myself.

10           Anyway, we had -- then also we were told to  
11 get records from Mr. and Mrs. Wade that supposedly --  
12 they were the ones that paid the bills or something  
13 on the property. So it was a long time and we could  
14 not get the records.

15       Q   Let's try to clarify some of these events.

16       A   Okay.

17       Q   I have a question first on the November 7,  
18 1988 letter. The letter states "as a favor to me,  
19 the realtor handling the property paid the taxes,"  
20 referring to certain real estate taxes. The letter  
21 goes on to state "in order to reimburse the realtor,  
22 I have had to pay more than \$1000 in back tax

1 reimbursement. I am sending you the correspondence  
2 concerning that."

3           Do you recall ever receiving that  
4 correspondence?

5       A   I don't remember. I probably did. But I  
6 don't remember.

7       Q   The letter goes on to state "I wanted you  
8 to be aware of these transactions since I am handling  
9 them personally rather than through the corporation  
10 because we can find no information about the status  
11 of the corporation at this time. After you have  
12 reviewed all of this material, I would appreciate you  
13 letting me know if there is anything I need to be  
14 doing in the next two months to maximize whatever  
15 personal tax advantage I can obtain out of this turn  
16 of events."

17           Did you advise Mrs. Clinton in any way how  
18 she might be able to obtain tax advantage out of  
19 these events?

20       A   The way I'm reading this, based on my  
21 history of working with Mrs. Clinton, is that she is  
22 asking for maximizing tax advantage before the end of

1 the year for anything she could do before the end of  
2 the year, not necessarily this particular  
3 transaction. Because normally she would either by  
4 letter, and probably a lot of times by letter, or by  
5 phone she would call and she would want us to do some  
6 projections and figure out what she could do before  
7 the end of the year, so anyway that she could  
8 maximize any tax savings, minimize her taxes, what is  
9 the maximum contribution she could give. That was  
10 one of the big issues is contributions, because the  
11 rest of it I don't know that she had much control  
12 over.

13 At this point in time, as far as I  
14 remember, Whitewater to me would have been a blur. I  
15 wouldn't have known what in the world Whitewater  
16 was. I didn't know anything really about Whitewater  
17 until we got the records and prepared the tax  
18 returns. I don't remember that I knew that  
19 Whitewater existed or that I knew what it was.

20 Q Let me ask you another specific question.  
21 The letter is a page and a half single spaced and  
22 describes in some detail certain events concerning

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1 the lots, one of the Whitewater lots. The last  
2 paragraph states "after you have reviewed all of this  
3 material, I would appreciate your letting me know if  
4 there is anything I need to be doing in the next two  
5 months to maximize whatever personal tax advantage I  
6 can obtain out of this turn of events."

7 It seems that this is very specifically  
8 referring to these events discussed in this letter  
9 rather than more generally. Is that your  
10 understanding?

11 A Like I said, I don't remember, because I  
12 didn't even recollect this letter. When I met with  
13 the Independent Counsel's office last fall, I didn't  
14 even remember ever seeing this letter.

15 So I don't remember, but if she was asking  
16 anything, if it had to do specifically with the  
17 things in this letter, it would have been just that  
18 particular transaction, the sale of that lot. If I  
19 remember correctly, later on when we did the  
20 projections and prepared the tax return, the things  
21 were -- there were several additional information  
22 that we had to get to actually complete that

1 transaction in the return, because I don't think that  
2 Mrs. Clinton had all the information right here in  
3 this letter. So we may have been just --

4 MR. JIAMPIETRO: Off the record for a  
5 minute.

6 (Discussion off the record.)

7 BY MR. JIAMPIETRO:

8 Q In order to clarify some of these events, I  
9 want to show you a document Bates stamped 133-281,  
10 which is a letter from you to Mrs. Hillary Clinton  
11 dated June 1, 1990. The first line reads "re:  
12 Whitewater Development Company." Would you take a  
13 moment to review that letter and then describe it for  
14 us.

15 A Yes. I remember this letter.

16 (Witness examined the document.)

17 THE WITNESS: Yes, I read it.

18 BY MR. JIAMPIETRO:

19 Q I also want to show you a document Bates  
20 stamped 133-22. The top of this document states  
21 "notes on Whitewater estates AB, and is dated  
22 February 17, 1990. Are these your notes?"

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1 A No. They are Alison Burton's, another CPA  
2 in our office.

3 MR. COLE: Is Ms. Burton the CPA who  
4 reviewed the records?

5 THE WITNESS: Yes, that Mr. James provided  
6 to our office.

7 BY MR. JIAMPIETRO:

8 Q Why don't you take a moment to review this  
9 document as well.

10 (Witness examined the document.)

11 MR. JIAMPIETRO: For the record, I will  
12 note that this document shows that several telephone  
13 conversations with Charles James -- let me correct  
14 that. It shows that one or more conversations may  
15 have occurred with Charles James and Ms. Burton. The  
16 notes state "TC, C. James 3/2/90," referring to March  
17 2nd, 1990, and there are two pages of notes with 12  
18 items listed detailing questions and issues relating  
19 to Whitewater and tax issues relating to Whitewater  
20 Development Corporation.

21 THE WITNESS: Okay. I reviewed it.

22 BY MR. JIAMPIETRO:



1 Q After reviewing those two documents, do you  
2 have a better idea of the information you would have  
3 received, the timing of receiving that information?

4 A Yes.

5 Q And could you please describe for us your  
6 understanding of how these events may have  
7 transpired.

8 A The first thing that happened is the  
9 letter, the copy of the letter from the IRS or the  
10 letter from IRS that we received from Mrs. Clinton,  
11 and she had gotten this letter from IRS as to the tax  
12 return of the corporation I think one year or so  
13 being delinquent. I believe she called me and talked  
14 to me and told me that she didn't know very much  
15 about what was going on with this corporation.

16 She gave me some background that she had  
17 been involved in the corporation. They had not -- I  
18 remember she said something that they had never  
19 received any reports from Mr. McDougal, who was the  
20 one that operated the corporation, and I remember she  
21 telling me that they had not been able to get hold of  
22 Mr. McDougal and they didn't know where he was at,

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1 his whereabouts.

2 So she wanted to know what to do about that  
3 letter, and I told her that we needed to answer it,  
4 and I asked her -- at that point in time I remember  
5 finding out that she said she and the President were  
6 stockholders of the corporation. So I told her that  
7 as a shareholder of the corporation, she was liable  
8 for the return. They would need to file the return,  
9 because she wondered what she needed to do, if she  
10 needed to do anything with that letter.

11 Since she didn't know anything about the  
12 corporation and she had never had anything to do with  
13 it before, so I told her that -- I advised her that  
14 they needed to file the returns for the corporation.  
15 She said she didn't know anything about records, had  
16 never seen any books, had never seen any records on  
17 the corporation.

18 I told her that she needed to contact  
19 whoever she had been dealing with. I know that she  
20 had been making payments on real estate taxes and on  
21 interest and things like that. So I told her she  
22 needed to contact those people.

1           So they did it, and somehow she contacted  
2 various people. I don't know if she contacted the  
3 bank and Mr. and Mrs. Wade and Charles James, but  
4 after that, the next thing that I remember is that  
5 Mr. James brought records to our office. I believe  
6 that he brought some books or something to our  
7 office.

8           He met with Alison Burton, not with me.  
9 Then we reviewed them. We found them to be  
10 incomplete. I let Mrs. Clinton know that. We  
11 started trying to -- she wanted us to try to get the  
12 records. She had already talked to the people and  
13 told them to give us the records.

14          We tried for a long time, and they promised  
15 us the records but we never got them.

16          Q   Let me ask you a question regarding the  
17 timing of these conversations.

18          MR. COLE: Before we do that, who were the  
19 people that you asked for the records?

20          THE WITNESS: We were supposed to be  
21 talking to Mr. and Mrs. Wade. Mr. and Mrs. Wade, if  
22 I understand correctly, they were the ones that were

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1   paying real estate taxes and just doing some --  
2 making some payments on some things in connection  
3 with Whitewater.

4          BY MR. JIAMPIETRO:

5          Q   You also noted that she had contacted some  
6 banks?

7          A   I believe that somebody -- I do not know --  
8 Alison Burton in my office, she did a lot of things  
9 for me and under my direction, and she may have been  
10 told to go ahead and contact the bank. Somebody  
11 notified the bank that it was okay to give us the  
12 records.

13          But I remember we talking to the bank and  
14 trying to get records. We were not able to get  
15 records, and eventually it took a conference call  
16 between Mrs. Clinton, the President and myself to  
17 Mr. or Mrs. Wade to obtain the rest of the records.

18          Q   Could you please describe that call, the  
19 substance of that call.

20          A   Well, I can't remember exactly how it  
21 happened. I'm sure it was Mrs. Clinton, the one that  
22 called me, and not the President. I informed her

1 again that we had not been able to -- we were trying  
2 to prepare the tax returns, and we just had very  
3 incomplete information, and also we were given the  
4 prior year tax returns as a beginning point for the  
5 subsequent year return that we were preparing.

6 Q The Whitewater Development returns?

7 A Yes. This is the first time that we ever  
8 saw anything connected with Whitewater. When I  
9 say -- I would qualify, we saw the information in  
10 that letter that you showed me in 1988 in connection  
11 with the sale of that lot. But it was just  
12 Mrs. Clinton's personal transaction. Do you  
13 understand what I'm saying?

14 Q Let me ask you a couple specific questions  
15 first.

16 A Yes.

17 Q You noted that there were either one or  
18 several conversations or meetings between yourself  
19 and Mrs. Clinton to discuss the delinquent returns.

20 A I believe there were telephone  
21 conversations. I don't remember exactly, but I don't  
22 remember meeting with Mrs. Clinton very many times.

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1 Q When would these telephone conversations  
2 have occurred? We have several dates here. We have  
3 the June 1st, 1990 letter from you to Mrs. Clinton  
4 describing -- enclosing the federal income tax  
5 returns for Whitewater Development Corporation for  
6 the years 1987, '88 and '89. We have several notes  
7 which we have shown you, apparently between  
8 Ms. Burton -- apparently prepared by Ms. Burton, that  
9 are dated in the middle of February 1990.

10 A February 17.

11 Q And also appear to be -- other notes appear  
12 to show the date March 2nd, 1990, referring to a  
13 telephone conversation with Charles James.

14 When would these conversations with  
15 Mrs. Clinton have occurred?

16 A Well, it would have occurred during this  
17 period of time. If we could find the letter from  
18 IRS, if we could find the letter from the IRS asking  
19 for that delinquent return and see what was the date  
20 on that letter, that would give us a starting point,  
21 because we got that after -- when Mrs. Clinton  
22 received that letter, she sent it to us and told us

1 that she had received this letter and then told us  
2 what she knew about Whitewater and then asked for  
3 advice, what she should do.

4 Q Between the time that you would have  
5 received the letter from Mrs. Clinton and the June  
6 1st, 1990 letter you sent to her enclosing the  
7 returns, how often would you have discussed this  
8 matter with her by telephone?

9 A I don't remember. The one thing that I  
10 will tell you is this. These notes could have been  
11 February 17. If these are the first notes you saw on  
12 Whitewater by Alison Burton, this would have been  
13 right after we received the records, the first  
14 records we ever saw of Whitewater.

15 So we may have gotten them around that  
16 time. Beginning from January, from about January 15  
17 through April 15 is the busiest time in a CPA firm.  
18 We would have been very, very busy in a small firm  
19 doing tax returns for lots of other people, doing  
20 payroll tax work, ending the year for corporations  
21 and doing books for corporations.

22 So I am sure that we were not spending a

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1 lot of time following through on this. Because any  
2 time that we don't have records to complete work, we  
3 set it aside and put it back to the client, get us  
4 the records.

5 So I don't think that we would have been on  
6 the phone every day or anything like that looking for  
7 this. We would have been very busy with our other  
8 work.

9 Q Would you have been on the phone once a  
10 week?

11 A I don't remember it. I have no  
12 recollection.

13 I don't remember being on the phone once a  
14 week on this.

15 Q What would have been the timing of the  
16 conference call that you referred to earlier between  
17 then Governor Clinton, Mrs. Clinton, yourself and the  
18 Wades?

19 A It would have been probably -- I am  
20 guessing at this, but it would have been probably  
21 close, within two months from the time the tax  
22 returns were completed, because after that



1 conference, we got the records.

2 We got the records probably within -- I  
3 don't remember. It wouldn't have been like the very  
4 next day, but we got the records within a reasonable  
5 amount of time after that conference call.

6 MR. COLE: That was the conference call  
7 with the Wades? Because you also mentioned when you  
8 first talked about this about contacting the bank.

9 THE WITNESS: There was no conference call  
10 to the bank, as far as I can remember. The  
11 conference call that I remember was with either  
12 Mr. or Mrs. Wade, one of the two or both. It was  
13 definitely Mrs. Clinton, the President and myself.

14 The purpose of the conference call was time  
15 went by and they kept promising us the records, and  
16 we couldn't get them. Normally we don't try to  
17 obtain records for clients unless the client just  
18 insists that they don't have to have it and we do  
19 it. Our normal procedure is for the client to bring  
20 us the records and we do the work.

21 BY MR. JIAMPIETRO:

22 Q I would like to show you several

1 documents. These are copies of the Whitewater  
2 Development Corporation corporate income tax returns  
3 that were filed in 1990.

4 A Yes.

5 Q This is document LP 612. The 1986  
6 corporate return, document LP 620, document LP 629.

7 Why don't you take a moment to review  
8 those.

9 (Witness examined the document.)

10 I'm just trying to get a better  
11 understanding as to the timing of the conversation  
12 you had with the Wades. We showed you previously the  
13 June 1, 1990 letter from you to Mrs. Clinton  
14 enclosing the returns.

15 The returns that we just showed you for  
16 Whitewater dated 1986, '87 and '88 or for the years  
17 1986, '87 and '88 are signed by you, and the date of  
18 that signature is June 1, 1990, the same date as the  
19 letter. Then they are also signed, it appears, by  
20 Susan McDougal and there is a date July 19, 1990.

21 After reviewing these dates, do you have a  
22 better understanding of when the conversation would

1 have occurred between the Clintons and the Wades and  
2 yourself and when you would have received the  
3 information from the Wades?

4 A No, I do not. The only thing that I can  
5 tell you is it happened sometime between February 17  
6 and June 1, 1990. Now, the thing that complicates  
7 matters during this time is I know that we couldn't  
8 get the records. I know that Mr. James brought some  
9 records to our office. After that, if I remember  
10 correctly, just from my conversations with Alison  
11 Burton in my office, Mr. James I believe went in the  
12 hospital and we couldn't even locate Mr. James.  
13 After that we were not getting return calls. We were  
14 leaving messages for Mr. James and we never heard  
15 from Mr. James anymore.

16 So we could not get any more. We were  
17 trying to get explanations and trying to understand.  
18 We couldn't find a working trial balance for the last  
19 tax return that he prepared in order to tie the tax  
20 return. We could not reconcile -- I'm just going  
21 from memory. We couldn't reconcile the return to the  
22 books. We were having all kinds of problems and very

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1 incomplete information.

2 So we could not -- when we could not get  
3 anything from him, then we gave that information to  
4 Mrs. Clinton and asked that we needed more records,  
5 and what we needed. And at that point in time, I  
6 cannot remember if they tried to get the records  
7 first and then couldn't and gave it to us. When I'm  
8 saying "they," one person that got records for the  
9 Clintons a lot of times was Ms. Huber, Carolyn  
10 Huber. So Carolyn Huber may have been involved in  
11 trying to obtain records. I don't remember exactly.

12 I remember that we ended up trying to  
13 obtain records and we couldn't get them. So finally,  
14 I got Mrs. Clinton involved and told her we are not  
15 going to obtain them, they keep promising them to us  
16 and we don't get them. They would not tell us they  
17 were not going to send them. They would tell us yes,  
18 we will send them, and we wouldn't get them.

19 The one thing that -- since it was filing  
20 season -- I had a small CPA firm and during filing  
21 season we are working around the clock six days a  
22 week, working nights and everything. These were

1 delinquent returns. We had already sent a letter. I  
2 had already responded to the IRS letter, IRS request  
3 for the letter, and they had responded back saying  
4 that the corporation was not required to file a  
5 return, which was not so.

6 So we probably were not worried about just  
7 getting after these.

8 Q In the June 1, 1990 letter it states  
9 that -- you state and write to Mrs. Clinton that "the  
10 records we received from you, from Charles James and  
11 from Rosalee Wade." Do you recall what records you  
12 received from each of those people? Let's take it  
13 step by step. What records you would have received  
14 from Mrs. Clinton?

15 A I do not recall, because I didn't get them  
16 in my hand. It would have been my secretary,  
17 receptionist would have gotten part of the records  
18 and Mrs. Burton would have gotten the rest of the  
19 records. The records we were trying to get from the  
20 bank were the ones we got later on when we prepared  
21 the subsequent returns, which is strictly records of  
22 the payments collected on the notes, that the bank

1 was collecting payments on all these notes, and also  
2 information from the bank as to interest paid to the  
3 bank on the bank loan.

4 That is the type of information that we  
5 would have gotten from the bank, and it may be at  
6 that point in time -- I don't remember if the bank  
7 sent it to us directly or Mr. and Mrs. Wade obtained  
8 that information and sent it to us.

9 Q It also states that you received records  
10 from Charles James. Would you have received the  
11 Whitewater working papers or ledgers from Charles  
12 James?

13 A There were not a lot of working papers as  
14 far as I remember. We would have gotten books. What  
15 I remember getting from Mr. James were books. We got  
16 two sets of records from Mr. James. The first one  
17 came directly from him, if I remember correctly,  
18 because he came to our office.

19 Q Try to put times on these, if you can.

20 A Okay. Mr. James came to our office and met  
21 with Alison Burton.

22 Q The time would have been about?

1 A Sometime right before these notes.

2 Q The notes that were taken by Alison Burton  
3 dated February 17, 1990.

4 A She got those records. That is the first  
5 set of records we received on Whitewater.

6 Q Obtained directly from Charles James?

7 A If I remember correctly, yes, because he  
8 came from our office. If I remember correctly, it  
9 was strictly the books of the company and possibly --  
10 I don't know for sure -- the prior year return,  
11 because we had asked.

12 We were not trying to analyze Whitewater or  
13 anything. All we were trying to do is prepare tax  
14 returns. Normally what we would have asked is the  
15 prior year returns, working papers, if there are any  
16 available, and the books for the years of the returns  
17 that we were supposed to have been preparing.

18 He gave us the best that he could.

19 Q Was there a subsequent time when you would  
20 have received more records?

21 A Subsequently, six months to a year after we  
22 completed the tax returns, and I have no idea when

1 exactly, but after we completed the tax returns, as  
2 my letter stated, I told Mrs. Clinton that we had  
3 incomplete information, that we were guessing and  
4 made a lot of assumptions in preparing those tax  
5 returns. I told her in the letter, if I remember  
6 correctly, that the tax returns may need to be  
7 amended in the future, the tax returns that we  
8 prepared, because we had very incomplete information.

9 We couldn't tie hardly anything in those  
10 books. We didn't have working trial balance,  
11 beginning point for the prior year return that was  
12 prepared. Going on recollection again, it seemed  
13 like the loans, the notes payable or liabilities of  
14 Whitewater, the names kept changing on the notes and  
15 we couldn't figure out what had happened to a note  
16 and when it had gotten paid off or if they were  
17 just -- if the notes were payable to companies that  
18 changed names. We couldn't figure out what in the  
19 world had happened on those notes.

20 So the only thing that we told -- I told  
21 her in the letter, that because the company had  
22 substantial carried forward losses, I didn't think it



1 would be a big problem to go ahead and file the  
2 returns. I felt like we needed to go ahead and file  
3 the returns and if amended returns needed to be filed  
4 later, we could do that, and she needed to continue  
5 trying to get additional records.

6 Sometime -- and I told Mrs. Clinton that  
7 there was no way that we could get the records from  
8 Mr. James. We couldn't even get Mr. James to return  
9 our calls, we didn't know what had happened to him.

10 So I told her that I felt that if she  
11 talked to Mr. James, she was the First Lady in  
12 Arkansas, that she may be able to get the records  
13 from Mr. James a lot easier than we could.

14 Like I said, six months to a year later, we  
15 got one or two boxes of records from Mrs. Clinton  
16 that were delivered to us from Mrs. Clinton.  
17 Somebody from her office delivered them, and they  
18 were additional records that she had obtained from  
19 Mr. James.

20 MR. COLE: How do you know that those  
21 records came from Mr. James?

22 THE WITNESS: Mrs. Clinton told me that,

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1 and Mrs. Clinton told me she had met with Mr. James.  
2 I told her, I advised her, I told her I don't think  
3 that we are going to have -- she wanted to find out  
4 what was really the truth about Whitewater. She  
5 wanted to find out what was the status of it, did  
6 Whitewater have any assets left, did Whitewater --  
7 how much money did Whitewater -- was there any equity  
8 or anything that -- she was concerned that they had  
9 put in a lot of money into Whitewater and that she  
10 had never gotten any money back. She was concerned  
11 that maybe, was there any possibility of getting any  
12 money out of Whitewater.

13 When we were preparing the tax returns,  
14 when we first started doing that work for Whitewater  
15 to prepare the tax returns, she told us that she was  
16 hoping -- she felt that -- she was hoping that  
17 Whitewater had the money to pay us for the tax  
18 returns and if not, she guaranteed that she would pay  
19 us to prepare the returns.

20 Anyway, when those records surfaced later  
21 on, like I said, six months to a year later, she  
22 wanted us to go back in there and see if there was

1 anything that we could piecemeal or add to whatever  
2 we found out before and see if we could determine  
3 definitely how much money she had put in.

4 She wanted to know how much money they had  
5 put in, and she wanted to know if there was going to  
6 be any money left in Whitewater that she could get  
7 some of their investment back and some of the things,  
8 some of the expenses -- it is my understanding at  
9 that time that she also, in addition to paying off,  
10 because at the end obviously Whitewater was not going  
11 to pay us, there was no money or whatever, and so she  
12 paid us. And I think that we didn't get paid for six  
13 months, eight months or something, 10 months later,  
14 something like that.

15 BY MR. JIAMPIETRO:

16 Q I'm going to ask you some questions on  
17 that. I want to go back. You said you received a  
18 second set of documents relating to Whitewater that  
19 you received from Mrs. Clinton.

20 A Yes, from her office.

21 Q Do you recall who delivered those to you?

22 A No, I don't. But when we did work for

1 Mrs. Clinton, a lot of times the Rose Law Firm had  
2 delivery people and a lot of times they would be  
3 delivered by somebody there or Carolyn Huber  
4 delivered a lot of things for us.

5 Initially when I --

6 Q Before you go on, I want to let you know  
7 that Carolyn Huber has testified previously before  
8 this committee in a deposition taken on January 17,  
9 1996 that she received several boxes of documents  
10 sometime after 1986 from Mr. McDougal's accountant,  
11 from Charles James, and delivered those boxes to  
12 you. She said that her house was near your office  
13 and that she had delivered the boxes to you.

14 A Sometime after 1986? That would have been  
15 '90 or '91, because it would have been after,  
16 several months after these tax returns were  
17 completed.

18 Q We have here copies Bates stamped 133-24.  
19 In the upper left-hand corner states "Whitewater  
20 estate, Inc. working trial balance FY ending  
21 5/31/87."

22 Did you prepare this document?

1 A No. Alison Burton did. I think her  
2 initials --

3 Q Would this have been prepared prior to the  
4 preparation of the Whitewater tax returns?

5 A Yes. This would have been prepared to  
6 prepare the tax return. Basically this is what we do  
7 in preparing a tax return. We would have taken right  
8 here -- see, 5/31, what year is the first year we  
9 prepared?

10 Q '86.

11 A '86, but for the fiscal year ending  
12 5/31/87. So right here would have balance for  
13 5/31/86 tax return, this would have been a tax return  
14 prepared by the accountant and bookkeeper that  
15 prepared them before, Mr. James.

16 Q So you would have taken the starting  
17 balance from Mr. James's books?

18 A Yes.

19 Q And would you have had the bank records as  
20 well when you prepared this?

21 A Remember one thing, it just says "balance  
22 per tax return." This would have been the balance

1 per his tax return.

2 MR. COLE: Not from the books of the  
3 corporation?

4 THE WITNESS: Correct. If I remember  
5 correctly, we could not reconcile the balances in the  
6 tax return to the books. If I remember correctly,  
7 and a lot of times that is normal, but just in  
8 general we would tie it. If I remember, we couldn't  
9 find it in their journal entries or whatever.

10 MR. COLE: The books of the corporation  
11 were one of the things Mr. James provided initially  
12 when he first gave you Whitewater documents?

13 THE WITNESS: Yes. He provided the books  
14 to us, but he provided the books to us if I remember  
15 correctly for the years we were supposed to do the  
16 tax returns, not for prior years.

17 MR. COLE: So you did not have a complete  
18 set of books throughout the existence of the  
19 corporation?

20 THE WITNESS: No. We would not have needed  
21 them. When you prepare a corporate tax return, you  
22 start with the beginning balance.

1 MR. COLE: What you would like to do was  
2 reconcile the amounts shown on the tax returns to the  
3 books but you were unable to do that?

4 THE WITNESS: We would have liked to  
5 reconcile this ending balance right here from the  
6 previous year's tax return to his beginning balances  
7 in the books. If I remember correctly, we couldn't.

8 BY MR. JIAMPIETRO:

9 Q Let me show you a document Bates stamped  
10 133-41. This may refresh your memory as to whether  
11 or not you prepared such a reconciliation.

12 A Yes. All the work papers, I didn't prepare  
13 work papers in my office. All the work papers, the  
14 only thing they would find prepared by me would have  
15 been notes to my accountants. I review. I sign  
16 everything that went out of my office after I review  
17 it.

18 The things that you would find prepared by  
19 me would be notes questioning the accountants, did  
20 you consider this, what do we have on this, anything  
21 that would be a question in my mind. These were  
22 prepared by Alison Burton. They are her initials

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1 right there. This is the time when they were  
2 prepared.

3 Q April 20, 1990?

4 A Yes.

5 Q What would this have represented?

6 A We were looking at payables. Like I  
7 mentioned before, we had a very difficult time  
8 analyzing payables. First of all, really, to put it  
9 mildly, we had a difficult time in the whole thing.

10 Q I think that is perfectly clear. Let me  
11 just ask you a very specific question on this. This  
12 would have been prepared from the books, though?

13 A Yes, from his books, yes.

14 Q You prepared this reconciliation from the  
15 books?

16 A Yes, Mr. James's books.

17 MR. COLE: I want to be clear for our  
18 record, when you say you had a difficult time with  
19 payables, you might explain what you mean by payables  
20 for those who aren't accounting professionals.

21 THE WITNESS: Payables are liabilities of  
22 the corporation. I remember that that was a big



1 problem because it seemed like the payables changed  
2 names. Remember, we were doing three years at one  
3 time, okay, which is not typical. When you are doing  
4 a tax return you are doing one year at a time. We  
5 were doing three years at one time.

6 We could not figure out -- we were trying  
7 to follow through on those payables, the liabilities  
8 at the end of one year and the next one and the next  
9 one, and the liabilities didn't have the same names.  
10 Some of them would disappear and other ones appear.  
11 So we didn't know what to think of it, and we had no  
12 one to ask, and we had no work papers.

13 MR. COLE: Those would be amounts of money  
14 the corporation owed to third parties that you could  
15 not trace?

16 THE WITNESS: Right. We didn't know. We  
17 were try to trace what happened to them and trace the  
18 balances. In fact, when we prepared that first  
19 return, anything we couldn't figure out -- we were  
20 making a lot of assumptions in preparing these  
21 returns. Anything that we could not figure out,  
22 anything -- if we would have a credit, if we need to

1 put a credit somewhere and we can't figure it out, we  
2 would normally put it into income, because the IRS  
3 would say anything you can't account for is going to  
4 be income.

5 BY MR. JIAMPIETRO:

6 Q Let me refer you to a couple entries on the  
7 document 133-41, the analysis of payables we were  
8 discussing. On lines 3 and 4 of the worksheet, it  
9 notes a payable to H. Rodham in the amount of  
10 \$33,365.42 and a note payable to Great Southern for  
11 \$33,365.48.

12 Then to the right of those two numbers,  
13 there is the notation "N/P citizens." Do you have  
14 any -- can you describe this entry to us?

15 A Not really. Let me tell you, I know little  
16 to nothing about Whitewater, as you can see.

17 Q Did you ever discuss this entry with Alison  
18 Burton?

19 A I don't remember. I discussed with her  
20 things in general. I was very confident that she was  
21 doing whatever work was needed in tracing them.  
22 These like notes payable, Citizens -- she may have in

1 trying to trace payables, she may have identified  
2 that to be notes payable, Citizens Bank.

3 Q Well, I will just state for the record that  
4 there is a notation at the bottom of the page which  
5 states that this information may have been  
6 obtained -- it states "per telephone conversation  
7 Charles James, March 2nd, 1990," and it lists notes  
8 payable to a number of entities or persons, including  
9 Great Southern Land Company, Bill Clinton, Hillary  
10 Rodham, another entry to Great Southern, Pembroke  
11 Manor, Flowerwood, McDougal & Associates, Rolling  
12 Manor, JSM, Security Bank Paragould, and there are  
13 several other calculations on the sheet.

14 A Can I clarify something? When we prepared  
15 these papers, we were not trying to analyze  
16 Whitewater at all. All we were doing is trying to  
17 get the beginning balances on the balance sheet from  
18 the prior year return and bring them up to date,  
19 okay, in a way that would make some sort of sense  
20 that we would feel comfortable that we were following  
21 through on these payables, receivables and income.

22 At the end, the only thing that we really

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1 knew for sure was the income and expenses because the  
2 bank was collecting on these receivables, on the  
3 contracts, the lots or whatever that had been sold.  
4 It was my understanding that the bank was collecting  
5 on all of them, and I think that there was another  
6 one that there was a receivable from Mr. and  
7 Mrs. Wade, if I remember correctly, because they had  
8 bought some of the land.

9 So at the end, when we could not figure out  
10 the books and we could not figure out all these  
11 things and all we are trying to do is prepare a tax  
12 return, but we knew income and expenses, we put the  
13 income and expenses in there, we plug everything else  
14 at the end and got out of the returns.

15 Q I would like to note for the record that in  
16 your June 1 letter to Mrs. Clinton you note that it  
17 was very time-consuming for us to prepare these tax  
18 returns.

19 So did you spend quite a bit of time on  
20 these returns?

21 A Yes, we did.

22 Q And analyzing the corporation and the books

1 of the corporation?

2 A We were not analyzing the corporation. We  
3 didn't have much information about the corporation.  
4 We were analyzing the books of the corporation. We  
5 had I believe a general ledger and I cannot remember  
6 if we had cash receipts and disbursements journal.  
7 But anything that we traced, the books were  
8 incomplete. Anything that we tried to trace,  
9 accountants, as accountants you will realize that you  
10 try to go from the general register to the cash  
11 disbursements journal and we could not match a lot of  
12 things.

13 Q You also noted that you called the bank  
14 specifically and tried to get some of the missing  
15 information from the banks and from the Wades.

16 A Because initially when we started trying to  
17 prepare the returns, we thought we could prepare the  
18 returns from the books. Normally a CPA will prepare  
19 tax returns from the books, period. You don't need  
20 anything else. The books should be correct. You get  
21 a general ledger, and you get financial statements.  
22 If you really want to test them and want to go into

1 the cash disbursements journal for some things, you  
2 should be able to trace things.

3 MR. COLE: That's for a normal company,  
4 though, not one that Jim McDougal was running.

5 THE WITNESS: Right. We tried to do that.  
6 We tried to do that and we could not do it. So when  
7 we couldn't do it, that's the normal approach. We  
8 tried to do it by even trying to make some sense by  
9 doing work papers and trying to figure it out, are  
10 these liabilities, which one became what and what.  
11 We were trying to guess, like the liabilities at the  
12 end of the year, what happened to them. We were  
13 looking at those other ones. We were trying to match  
14 them.

15 BY MR. JIAMPIETRO:

16 Q As you stated earlier, when you couldn't do  
17 that, you called Mrs. Clinton and said we need some  
18 additional information.

19 A When we could not do it, at the end we  
20 tried every way to do a tax return the normal way  
21 that we would do a tax return, which is from the  
22 books and working papers and so forth. When we could

1 not do it, we decided that the only way we are going  
2 to get a tax return that would have any sense of  
3 accuracy is to get the income from the bank. We  
4 learned more and more about the corporation. We  
5 started asking questions. We learned that the bank  
6 was collecting the receivables. Alison Burton talked  
7 to Mr. and Mrs. Wade or both several times, trying to  
8 get explanations.

9 The explanations did not come from  
10 Mrs. Clinton. It is my understanding that she had  
11 never seen any of this before. Of course, if she had  
12 seen the books, she wouldn't have understood because  
13 she is not an accountant.

14 Q But you noted previously that you had some  
15 difficulty getting actual documents from the Wades  
16 and that necessitated a phone call to Mrs. Clinton  
17 and a conference call with Governor Clinton as well?

18 A Right.

19 Q And the Wades in order to get the original  
20 documentation.

21 A But prior to that they answered questions  
22 for us. As we were going through the books, and

1 Alison Burton met with Charles James at least one  
2 time. I believe it was only one time. I think she  
3 talked to him on the phone once or twice and got some  
4 answers to some questions. But then when things --  
5 we were asking a lot of questions that people could  
6 not provide answers for. The person who had prepared  
7 the books -- then we started not getting answers.

8 Q Let me just ask you a couple of follow-up  
9 questions relating to your relation to the Clintons  
10 and then I think we should probably take a little  
11 break.

12 Did you ever come to meet James or Susan  
13 McDougal?

14 A No, never.

15 Q Did you ever speak to them on the  
16 telephone?

17 A No, never.

18 Q Did you ever discuss in relation to the  
19 Whitewater investment them with the Clintons?

20 A In what sense?

21 Q Did you ever discuss with the Clintons the  
22 role that the McDougals played in the Whitewater



1 investment?

2 A Yes. I mean, Mrs. Clinton, I believe, told  
3 me the role that they played as opposed to the role  
4 that the Clintons played.

5 MR. COLE: And what did she tell you?

6 THE WITNESS: I'm going from recollection  
7 basically.

8 MR. COLE: That's all we can ask.

9 THE WITNESS: That they had invested in  
10 this thing a long time before and that they had been  
11 sending a lot of money and had never gotten any  
12 reports, had never gotten any information. And then  
13 later on I remember Mrs. Clinton mentioning to me,  
14 because I mean I had never heard of Mr. McDougal's  
15 name before even though I live in Arkansas, and I  
16 think at that time or before that time he had been  
17 indicted or something, but I don't remember his name  
18 but I remember her mentioning that she was involved  
19 in an indictment or something. I think that he might  
20 have even been in the hospital or something, and they  
21 could not locate him.

22 They had tried to get hold of him to try to

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1 find out exactly where Whitewater stood and what they  
2 needed to do about it, because since they had just  
3 been sending money and not getting anything out of  
4 it, they wanted to find out if there was anything, if  
5 the corporation could be liquidated or something and  
6 they could get their money, part of their money back  
7 or something, and that had not been possible.

8 Then I remember when it was time to sign  
9 the returns, that was another time that we discussed  
10 the McDougals, because Mrs. Clinton did not know --  
11 she did not want to sign the returns, and she did not  
12 know where Mr. McDougal was at, and he was the one  
13 that had signed the returns before. I remember we  
14 pointed out -- at some point in time -- I don't  
15 remember if it was at the time of their returns or  
16 later on when we got additional records, pointed out  
17 that we couldn't find him listed as shareholder. So  
18 she said that Susan McDougal could sign the returns  
19 and she would try to locate Susan McDougal.

20 I believe that the length of time between  
21 the time I signed the returns and sent them to  
22 Mrs. Clinton and when Susan McDougal signed the

1 returns was July 19 is because the length of time

2 Mrs. Clinton spent trying to find Mrs. McDougal.

3 MR. COLE: The return indicates you signed  
4 it on June 1st?

5 THE WITNESS: Yes.

6 MR. COLE: That was not signed until July

7 19th and that is because you think it took

8 Mrs. Clinton that much time to find Mrs. McDougal?

9 THE WITNESS: I remember Mrs. Clinton  
10 calling somebody in the process of trying to find  
11 somebody to sign the returns.

12 BY MR. JIAMPIETRO:

13 Q During this period of time, could you  
14 describe Mrs. Clinton's role with regard to  
15 Whitewater?

16 MR. COLE: Which period of time are we  
17 focusing on?

18 BY MR. JIAMPIETRO:

19 Q The period of time for the years that the  
20 income tax returns were not filed, '86, '87 and '88.

21 A Those years? I have no idea, because I  
22 didn't know anything about Whitewater.

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1 Q Was Mrs. Clinton paying the real estate  
2 taxes for Whitewater?

3 A I have no idea. The only thing -- as I  
4 mentioned before, the only time I really learned  
5 something about Whitewater is beginning in 1990, when  
6 we did this work. Prior to that you showed me that  
7 letter in '88. There was a transaction that was  
8 related to Whitewater, but it was really personal to  
9 Mrs. Clinton in connection with that lot 13. She  
10 wrote us that letter and then gave us the information  
11 for that transaction.

12 At that point in time, obviously from that  
13 letter Mrs. Clinton may have mentioned something  
14 about Whitewater, but it is a blur in my mind because  
15 I don't remember going into anything about  
16 Whitewater. I don't remember ever asking anything  
17 about Whitewater or knowing anything about Whitewater  
18 until 1990.

19 Q Based on your understanding of the  
20 Whitewater corporation currently and your  
21 conversations with Mrs. Clinton during 1990 and  
22 subsequent to 1990, who was primarily responsible for

1 taking actions with regard to the corporation?

2 A As far as I know, Mrs. Clinton told me all  
3 along that they never had anything to do with the  
4 corporation until --

5 Q Who was responsible -- who took  
6 responsibility for preparing the corporate returns?

7 A It was my understanding that it was  
8 Mr. McDougal.

9 Q But Mr. McDougal wasn't around at this  
10 period of time?

11 A Well, nobody prepared them. Didn't you  
12 understand?

13 Q I understand that. But who took  
14 responsibility for preparing the corporate tax  
15 returns in 1986, 1987 and 1988?

16 A Nobody. I just said nobody took any  
17 responsibility or did anything until --

18 Q Until Mrs. Clinton took action?

19 A Until that letter from IRS.

20 Q And then Mrs. Clinton took the actions?

21 A Right. She sent me the letter from IRS and  
22 she asked me what to do, and then she told me what

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1 she knew. She went in depth about the corporation  
2 and how they had invested in this corporation and  
3 really they never received anything. Really she  
4 hated to even talk about it because it was an  
5 embarrassment to them to just have invested in this  
6 and they never received any reports or anything.

7 Q From this point on, from the time they  
8 received the letter from the IRS and subsequent to  
9 that period of time, there was a more active  
10 involvement?

11 A From that point in time, I advised her.  
12 She sent me the letter and said what do I need to do  
13 with the letter from IRS. I said it needs to be  
14 answered. She said there is nobody to answer it, she  
15 didn't know anything about the corporation. I said  
16 we need to find out something and answer it. If I  
17 could look at the letter --

18 MR. COLE: I would like to be clear on one  
19 thing, Ms. Redden. When Mrs. Clinton gave you the  
20 letter she received from the IRS, was it your  
21 understanding that was her first knowledge that the  
22 taxes were delinquent?

1 THE WITNESS: Yes, that was my  
2 understanding. She had no prior knowledge. And she  
3 didn't know what to do.

4 MR. COLE: She was asking for your advice?

5 THE WITNESS: She was asking for my advice,  
6 what should we do.

7 BY MR. JIAMPIETRO:

8 Q Let me move on briefly to a related topic,  
9 which is the filing of the corporate tax returns for  
10 Whitewater for the fiscal years ending May 31, 1990,  
11 1991 and 1992. You filed the Whitewater corporate  
12 tax returns for the fiscal years ending May 31, 1986,  
13 1987 and 1988 in July of 1990, based on the  
14 signature --

15 A I prepared them June 1st, yes.

16 Q Did you come to prepare the Whitewater  
17 Development corporate tax returns for subsequent  
18 years at any time after the filing of those three  
19 corporate tax returns?

20 A Yes, we did. I didn't prepare them.  
21 Somebody else in my firm did. But I obtained the  
22 information for those returns to get prepared.

72

1 Q Do you recall when those -- let me show you  
2 a document Bates stamped DKS N 23781, which is a  
3 letter from J. Frasier Rogers to Jim McDougal dated  
4 June 18, 1993. Take a moment to refresh your memory  
5 on this document.

6 (Witness examined the document.)

7 At the same time I want to -- that's fine.

8 A Yes.

9 Q Do you recall when these returns were  
10 filed?

11 A I don't know when they were filed. I know  
12 when we prepared them. I don't know who we sent them  
13 to.

14 Q Could you please describe that for us.

15 A Okay. I can also tell you how these  
16 returns came to be prepared. The returns were  
17 prepared just prior to that time.

18 Q Just prior to June 18, 1993?

19 A Yes, after filing season during 1993. The  
20 returns were mailed to Mr. Blair.

21 Q Before you go on, do you recall why the  
22 returns were mailed to Mr. Blair?



1       A    Yes. Mr. Blair called me and told me  
2 that -- I'm going from recollection. He called me  
3 and told me that he understood that we were preparing  
4 these returns. Really he called me before they were  
5 ready. He said that he would appreciate if we could  
6 mail them to him. I told him that that would be  
7 fine, but we would have to check with Mr. Foster,  
8 Vince Foster, because it was my understanding that we  
9 were going to mail the returns to him.

10       So I called Mr. Foster and asked him if it  
11 was okay to mail them to Mr. Blair, and he said yes,  
12 that Mr. Blair was the one that ultimately was going  
13 to give them to Mr. McDougal.

14       Q    I will show you a document Bates stamped  
15 133-136, which is a letter from you to James Blair  
16 dated June 23, 1993 in which you state that you are  
17 enclosing the federal and state income tax returns  
18 for Whitewater Development Corporation for the fiscal  
19 years ending May 31, 1990, 1991 and 1992, and there  
20 is a cc to Mr. Vince Foster.

21       A    Uh-huh, yes.

22       Q    Trying to place this in perspective,

1   Mrs. Clinton received a notice from the IRS sometime  
2 in early 1990 that the Whitewater Development  
3 Corporation corporate tax returns were delinquent.  
4 At her request you prepared the corporate tax returns  
5 for Whitewater for 1986, '87 and '88 which were filed  
6 in July of 1990.

7       A    Uh-huh.

8       Q    Then there is a gap of time from 1990 until  
9 at least June of 1993, from July of 1990 through June  
10 of 1993 in which no corporate tax returns are filed  
11 for Whitewater. Were you aware of that?

12       A    Well, I will tell you some of the things  
13 that happened in between then. I don't know that I  
14 was necessarily aware of that because I don't know  
15 that I necessarily knew what was going to be the  
16 President and Mrs. Clinton's role in connection with  
17 Whitewater after that.

18       Subsequent to us preparing the return,  
19 remember that I mentioned that we received within six  
20 months to a year from the time we prepared the  
21 returns, we received one or two other boxes of  
22 records from Mrs. Clinton that came from -- that she

1 obtained from Mr. James.

2 At that point in time, Mrs. Clinton asked  
3 me would I -- would we look at those boxes and see if  
4 we could determine anything more about Whitewater  
5 concerning specifically two things; number one, if  
6 there was any way to determine how much money they  
7 had put in, the President and Mrs. Clinton, and two,  
8 what was left in Whitewater, what was Whitewater's  
9 equity, net worth, whatever was left in Whitewater,  
10 if there was still any way that the President and  
11 Mrs. Clinton could get any money back from  
12 Whitewater.

13 Q When would she have asked you to undertake  
14 this analysis?

15 A That was when I told you, when we received  
16 the two boxes from Mr. James. We didn't get them  
17 from Mr. James. She obtained one or two boxes of  
18 additional records from Mr. James six months to a  
19 year after we completed the return.

20 So she said these are the additional  
21 records. She still -- at that point in time, when we  
22 prepared the returns, we really -- she was hoping at

1 the time we prepared the return to learn something  
2 about the corporation, and we really learned very  
3 little. We just learned that we didn't know what was  
4 going on, because we couldn't really trace anything  
5 in the books.

6 So she wanted us to look at that, and I  
7 also -- remember, we are not talking about an in  
8 depth analysis. There have been some in-depth  
9 analyses done for Whitewater, the CPA firm in  
10 Colorado did an in depth analysis of Whitewater and  
11 some other people have done in-depth analyses of  
12 Whitewater.

13 At that point in time, she had already paid  
14 for the tax returns for Whitewater which turned out  
15 to be very expensive tax returns because it took us  
16 forever trying to figure out things. So she did not  
17 want to spend any more money in Whitewater.

18 We were going to do that work, just a  
19 cursory review pro bono for her without additional  
20 charges, just to --

21 Q Before you go on.

22 A Yes.

1 Q So you decided that you were going to do  
2 the Whitewater tax return -- I'm just unclear as to  
3 what you were going to do pro bono. Could you just  
4 clarify that.

5 A These boxes, six months to a year after we  
6 did the tax returns, I have no idea when -- let me  
7 tell you where you can find out when. There is a  
8 file that is called "analysis of Whitewater" or  
9 something like that. In that file there are work  
10 papers. Those work papers were done from those  
11 boxes. We made copies of a whole lot of things.

12 Mrs. Clinton wanted to find out what was  
13 left in Whitewater, was there any land, what assets  
14 Whitewater had, what were the actual liabilities and  
15 anything else that looked like a legal document or  
16 something.

17 So she wanted us to get that information  
18 for her and establish if there was anything to find  
19 out how much money they had put in, because we  
20 couldn't tell independent of the tax returns, then  
21 anything she wanted to know, any more information  
22 about the liabilities of Whitewater, how much was the

1 bank actually owed and everything.

2 So we took that, again with the  
3 understanding that we were going to do a very cursory  
4 review, we were not going to get paid for it.

5 So we tried to establish, learn something  
6 more about Whitewater. At that point in time we felt  
7 like we new a little bit more about Whitewater. We  
8 felt like -- I can't remember if we --

9 Q What point in time? You said at that point  
10 in time. This would have been subsequent to the  
11 review of the boxes?

12 A Yes.

13 Q Which would have been --

14 A Look at my work papers. It is a file  
15 called --

16 Q We have a number of work papers, some dated  
17 pre --

18 A It is one folder. It is one folder. Do  
19 you have a list of the folders that I actually gave  
20 to the independent counsel and to you? I had a list  
21 of that, so I brought that out. There is one folder  
22 that is called "analysis of Whitewater" or something

1 like that. There is a folder for each year of a tax  
2 return for Whitewater. There was a folder that we  
3 always had a permanent file for the client and then  
4 there is another folder I think that was called  
5 analysis of Whitewater. In that folder, that would  
6 have been the date of when that happened. I don't  
7 remember without looking at the folder, okay.

8 Q We will review that later. That's fine.  
9 I'm sorry?

10 A Go ahead.

11 Q What I was going to ask you is you filed  
12 the tax returns?

13 A Uh-huh.

14 Q You received these several additional  
15 boxes?

16 A Uh-huh.

17 Q You did an analysis of the information in  
18 those boxes?

19 A A very cursory analysis, I want you to  
20 understand that.

21 Q Did you prepare a report for the Clintons  
22 on those boxes?

1 A No. We did --

2 Q How did you report back your results to the  
3 Clintons?

4 A We did some work papers. We may have met.  
5 I may have met with Mrs. Clinton at that time. I  
6 can't remember. We did some work papers at some  
7 point in time talking to Mrs. Clinton and the  
8 President, and I can't remember -- about some of the  
9 liabilities of Whitewater, some of the names and the  
10 liabilities. And I remember, I think it was the  
11 President who recognized several of those names as  
12 being companies that were Mr. McDougal's companies.

13 I think it is because -- I think that there  
14 has been a whole lot about this information in the  
15 newspaper. I didn't follow Mr. McDougal.

16 MR. COLE: You think this meeting was  
17 something that occurred after the 1992 Presidential  
18 campaign?

19 THE WITNESS: No, not at all.

20 MR. COLE: When you say information in the  
21 newspapers about Mr. McDougal, you are talking about  
22 in connection with his indictment?



1 THE WITNESS: Yes, the prior. In one of  
2 those folders that says "analysis of Whitewater," or  
3 permanent file, there are even newspaper articles  
4 about Mr. McDougal's previous indictment. I  
5 remember -- now, I never met with the President  
6 concerning Whitewater as far as I remember.

7 But I remember talking on the phone or  
8 something with the President and Mrs. Clinton, and I  
9 cannot remember at what point in time, but it was  
10 sometime either when we had the first set of records  
11 or the second set of records that we talked on the  
12 phone. We were trying to look at the liabilities and  
13 see if these were still valid liabilities, because we  
14 were trying to establish what was left in Whitewater,  
15 you know, could the Clintons get any money back from  
16 Whitewater.

17 I was told and this is what we saw from  
18 looking at the information that we had, that there  
19 was never any check written to the Clintons either  
20 for repayment of their investment.

21 So I remember telling them over the phone  
22 these are the liabilities, these are the companies,

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1 and I remember that the President seemed to recognize  
2 several of the companies as being some companies that  
3 Mr. McDougal was involved with. If I remember  
4 correctly, he was involved and some of those  
5 companies were his own and some he was involved with  
6 other people.

7 So these were things that would have been  
8 in the paper, that people would have knowledge of. I  
9 didn't because I didn't know Mr. McDougal existed  
10 until Whitewater, until I learned about Whitewater,  
11 so I would never have followed.

12 BY MR. JIAMPINETRO:

13 Q Let me ask you one clarifying question.  
14 You have testified that there was a telephone call or  
15 conference call between yourself, Hillary Clinton,  
16 Governor Clinton and the Wades at some point prior to  
17 the filing of the initial set of corporate tax  
18 returns.

19 A Yes, yes.

20 Q Then you said there was a second telephone  
21 conversation between yourself, Mrs. Clinton and  
22 Governor Clinton to discuss the liabilities of

1 Whitewater. I would like to get a better  
2 understanding of the timing of the second phone  
3 call. Was it prior to the filing of the corporate  
4 returns? Subsequent to the filing of the corporate  
5 returns or subsequent to your analysis of those new  
6 boxes of information?

7 A Let me tell you something. I don't  
8 remember if there was a second call or if it was all  
9 in the same call. I do not remember. I remember  
10 talking to the President once by myself, you know,  
11 that Mrs. Clinton was not involved in connection with  
12 some of the records that were still missing.

13 Q Whitewater related records?

14 A Yes, the records that we were trying to  
15 obtain. But I remember that the time that we were  
16 going over the liabilities, it was a telephone call  
17 and it was Mrs. Clinton, the President and myself.

18 Q Then the Wades would not have been involved  
19 in that call?

20 A No.

21 Q There would have been two calls, one with  
22 the Wades and one without the Wades?

1 A I don't know if the Wades would have hung  
2 up. Because I remember we said goodbye and I don't  
3 remember if the Wades -- if it was that same call,  
4 the Wades would have hung up and the three of us  
5 would have talked.

6 MR. COLE: With respect to the conversation  
7 you remember having with President Clinton, Charles  
8 James testified at our hearing and in deposition that  
9 he received a telephone call from President Clinton  
10 at one point asking him for Whitewater records. Do  
11 you remember whether you suggested or asked the  
12 President to contact Mr. James?

13 THE WITNESS: Let me explain how that  
14 happened. Prior to the President getting involved,  
15 Mrs. Clinton, Carolyn Huber and Alison Burton in my  
16 office were trying to get the records. I had not  
17 talked to anybody, the Wades or the bank or anybody.  
18 I was only talking to Mrs. Clinton and telling her we  
19 still don't have the records. Alison Burton in my  
20 office was making calls. I can't remember at what  
21 point she started making calls but she was trying to  
22 get information from Mr. James. Eventually she

1 couldn't get information from Mr. James. I don't  
2 know if we were trying to get information from the  
3 Wades and the bank at the same time or after the fact  
4 or what.

5 But at some point in time it was obvious  
6 that we were not going to get any more information  
7 than what we had and there was no way we could  
8 prepare the returns with the information we had.

9 So I talked to Mrs. Clinton and I believe  
10 that she said -- she got -- up to then the President  
11 had not even been involved. I had not talked to him  
12 about it at all. At some point in time she said that  
13 she didn't think she could get them, and he thought  
14 the President could get them, maybe he would be the  
15 one that would have to call somebody to get them,  
16 because we were not getting anywhere.

17 So I think that she got him involved to try  
18 to get him to get the records.

19 MR. COLE: Do you recall whether it was  
20 before or after that occurred that you received the  
21 two boxes of documents from Mr. James?

22 THE WITNESS: Oh, it would have been

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1 after. The boxes would have come after those calls.  
2 If I remember correctly, those boxes didn't come  
3 about because of the President calling Mr. James, but  
4 it could have been. I thought that those boxes came  
5 about because of a meeting Mrs. Clinton had with  
6 Mr. James.

7 When I thought the President got involved  
8 was before we prepared the tax returns.

9 MR. COLE: Did you get any additional  
10 information after the President got involved?  
11 Because you already had the books of the corporation  
12 from Mr. James.

13 THE WITNESS: We had the books of the  
14 corporation from Mr. James and probably the prior  
15 year return -- I can't remember exactly. But in the  
16 work papers, we would have probably had a list of  
17 missing information. So anyway, the President --

18 MR. COLE: Excuse me for a second. The  
19 information after the President got involved -- after  
20 the President got involved, did you get additional  
21 information from the Wades after you had the  
22 telephone conversation with the Wades?

1 THE WITNESS: Yes. That's when we got the  
2 information and that's when we prepared the returns  
3 after that.

4 MR. COLE: Was that the time that you  
5 recall the President getting involved or was there  
6 another time the President got involved?

7 THE WITNESS: I called the President in  
8 connection with Whitewater twice. I remember twice.

9 MR. COLE: Tell us briefly first when those  
10 were and we will follow up.

11 THE WITNESS: I can't remember when was  
12 what, but I remember the time that was Mrs. Clinton,  
13 the President and myself that did the conference call  
14 to the Wades and talked to the Wades.

15 MR. COLE: Let me stop you for a second  
16 there. Was that before or after you had the  
17 discussion with Mrs. Clinton where she may have said  
18 the President may have to get involved to get  
19 information?

20 THE WITNESS: I'm sure that that was -- are  
21 you saying was the telephone conference before or  
22 after?

1 MR. COLE: Yes.

2 THE WITNESS: Before or after -- I'm sure  
3 that the conference, the telephone conference was  
4 after Mrs. Clinton said that, because up to then, the  
5 President was not involved.

6 MR. COLE: Let me ask you the question a  
7 different way. What I'm trying to determine was was  
8 that call to the Wades what resulted from the  
9 discussion you had with Mrs. Clinton when you two  
10 discussed getting the President involved? Did he say  
11 yes and then he called the Wades with you? Is that  
12 the way it happened?

13 THE WITNESS: No, that was not the way it  
14 happened.

15 MR. COLE: Why don't you tell us how it  
16 happened.

17 THE WITNESS: I don't know that I can tell  
18 you exactly. We are talking six years ago. I can  
19 tell you if I remember correctly, at some point in  
20 time we realized we were not going to get the  
21 records, we were not getting them. I don't know if  
22 anybody was trying to get them from Mrs. Clinton's



1 office. They were not getting them. We didn't have  
2 enough information to even attempt to prepare the  
3 returns.

4 So I communicated that to Mrs. Clinton.  
5 She arranged -- I can't remember if we were on the  
6 phone and she called the President right then, who  
7 was the Governor at the time, or that she talked to  
8 him, she said I will talk to him. Most likely it was  
9 that she said I will talk to him and then arrange to  
10 call me back and she called me back and called him  
11 and then we got the Wades on the phone.

12 MR. COLE: And then what did you get from  
13 the Wades? Did you get information you needed to  
14 file the returns?

15 THE WITNESS: I don't remember exactly. We  
16 got enough that we could file the return.

17 MR. COLE: So you are sure then that these  
18 discussions with the Wades and with then Governor  
19 Clinton occurred before the returns were filed?

20 THE WITNESS: Oh, yes.

21 MR. COLE: I wasn't clear on that. I'm  
22 trying to get it a piece at a time so I can

1 understand the sequence of events.

2 THE WITNESS: That particular conference  
3 was before the returns were filed.

4 MR. COLE: Let's stop right there. You  
5 said you recalled two instances in which you had  
6 contacts with President Clinton with respect to  
7 Whitewater. That was one of the instances, I take  
8 it.

9 THE WITNESS: Yes.

10 MR. COLE: Tell me what the other instance  
11 was and when it occurred.

12 THE WITNESS: The other instance, and I  
13 cannot tell you when it occurred unless I go back to  
14 my files -- and the only reason is that I was at a  
15 continuing education meeting in Kansas City,  
16 Missouri, and any time I was out of the office, my  
17 secretary was instructed any important call to call  
18 me in and I would return the call. I remember that  
19 the President, then Governor Clinton called my office  
20 and I returned his call from Missouri. Whenever that  
21 continuing education seminar was, if you are real  
22 interested in that date, I can go back to my

1 continuing education and check.

2 MR. COLE: Why don't you first tell us what  
3 the subject of the call was.

4 THE WITNESS: The subject of the call was  
5 was I still -- Mrs. Clinton wanted, I think, for him  
6 to have talked to him and wanted him involved and  
7 wanted me to talk to him directly as to what I  
8 needed.

9 MR. COLE: Let's slow down a little and  
10 tell us what you were doing at that time that you  
11 would have needed things for. Was this before you  
12 filed the returns or at some later time?

13 THE WITNESS: The only times that I needed  
14 something would have been three times in connection  
15 with Whitewater that I needed something in doing  
16 something for the Clintons. The first time is to  
17 file the first delinquent returns. The second time  
18 was in connection with trying to do that cursory  
19 analysis.

20 MR. COLE: Yes, that Mrs. Clinton asked you  
21 to determine.

22 THE WITNESS: With the additional records

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1 that they provided, yes. The third time was when we  
2 were going to file the three additional delinquent  
3 returns in '93.

4 MR. COLE: Understanding that, do you  
5 remember in connection to which of those three events  
6 it was that President Clinton called you in Kansas  
7 City?

8 THE WITNESS: Definitely not the last one.  
9 It was not in '93. I don't remember if it was in  
10 connection with the first returns or the -- it had to  
11 be in connection with those first returns, because on  
12 that cursory analysis, all we did was -- well, never  
13 mind, never mind.

14 Let me backtrack. When I say it had to be,  
15 I am going both ways. One thing is I don't think I  
16 would have been in a continuing education seminar,  
17 definitely not during filing season. It would have  
18 been after April 15th.

19 MR. COLE: The returns weren't prepared  
20 until June.

21 THE WITNESS: No. The returns were  
22 prepared prior to June 1st. I signed them June 1st.

1 So they had to be prepared in May. I could have been  
2 gone between April 15 and May. So it could have been  
3 between that point in time, between April 15 and  
4 sometime May 15th or so because we would have had to  
5 have some time to prepare the returns. Or it could  
6 have also been in connection with trying to obtain  
7 the additional information that Mrs. Clinton wanted  
8 to obtain in order to determine what were the assets  
9 and liabilities left in Whitewater.

10 MR. COLE: Let's pause a minute because you  
11 said a few minutes ago that there came a time when  
12 Mrs. Clinton wanted then Governor Clinton to get more  
13 involved and that you mentioned that in the context  
14 of this call in Kansas City. Do you remember whether  
15 that was more involved in the analysis she asked you  
16 to do or in the preparation of the returns?

17 THE WITNESS: No. I don't remember on  
18 which. All she wanted from him was to help us get  
19 the records. All we were desperate to get records.

20 MR. COLE: Let's stop again for a second.  
21 Because you needed records to complete the returns?

22 THE WITNESS: Yes.

1 MR. COLE: You didn't, as I understand your  
2 testimony, need -- although you certainly I'm sure  
3 would have liked to have had it, but you didn't need  
4 additional information to do the analysis. You had  
5 two boxes of records she was asking you to analyze.

6 THE WITNESS: Right, one or two.

7 MR. COLE: So if the reason for  
8 Mr. Clinton's involvement was because she wanted him  
9 to be involved with getting the records, it likely  
10 would have been in connection with the preparation --  
11 I don't know.

12 THE WITNESS: I absolutely don't remember.  
13 All I'm saying is this: Since it took six months to  
14 a year or so to get those boxes, it is possible that  
15 she may have needed him to call to try to get the  
16 additional information to try to determine what were  
17 the actual assets and liabilities of the corporation  
18 and what they had invested. That is possible. I  
19 don't remember.

20 MR. COLE: I understand that. That's why I  
21 told you that Charles James had testified before our  
22 committee that he received a call from President

1 Clinton asking for information about Whitewater,  
2 because I thought that might have been connected to  
3 the things you recalled.

4 THE WITNESS: Do you remember the date?

5 MR. COLE: Mr. Jiampietro will correct me  
6 if I'm wrong about this, but Mr. James did not recall  
7 the date, and he testified that he did not obtain any  
8 further information, that he would have had to get  
9 the information from Mr. McDougal and he didn't know  
10 where Mr. McDougal was. In that sense it doesn't  
11 seem to match up with what you recall, because  
12 Mr. James did not say yes and after that obtain two  
13 boxes of documents.

14 THE WITNESS: The boxes were not brought to  
15 us. This date can be very easily clarified, because  
16 I keep records of my continuing education for several  
17 years.

18 MR. COLE: Maybe you could check and talk  
19 with your counsel. He can let us know.

20 THE WITNESS: I can give you the exact  
21 date. I was at that seminar for probably three days  
22 or so. I can probably give you the exact date.

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1 MR. COLE: I don't know that it has any  
2 great significance for anything other than a lawyer's  
3 natural inclination to try to tie every date down and  
4 their interest in any involvement by President  
5 Clinton.

6 MR. LOFTON: We will provide you the date  
7 from her continuing education in Kansas City, year  
8 and month.

9 THE WITNESS: Really all he was wanting is  
10 what is it that he needed to ask for.

11 MR. COLE: Would this be a good time to  
12 take a break?

13 BY MR. JIAMPIETRO:

14 Q Let me ask you two follow-up questions that  
15 I was pursuing before we got into a more detailed  
16 discussion on the substance of these phone calls.  
17 Returning to the filing of the second set of three  
18 corporate tax returns for Whitewater which occurred  
19 in the summer of 1993, three years subsequent to the  
20 filing of the first set of the three delinquent tax  
21 returns.

22 A Yes.



1 Q Do you know why there was this delay?

2 A I can tell you my involvement in it. I  
3 don't know anything.

4 Q Why don't you tell us your involvement in  
5 this process.

6 A We prepared the returns in 1990. We had  
7 them delivered with this letter. Ms. Clinton still  
8 wanted some answers that she didn't have. So she was  
9 able to get those records from Mr. James. They were  
10 delivered to us. We did that very cursory review,  
11 tried to determine liabilities, assets and if there  
12 is anything that they could get back from  
13 Whitewater.

14 Then there was no more involvement of us on  
15 that until -- and again, you are going to ask me days  
16 and I don't remember days. Sometime after that,  
17 sometime after I gave that information to  
18 Mrs. Clinton about what we had learned about assets  
19 and liabilities, Mrs. Clinton asked me to meet at her  
20 office in the Rose Law Firm with she and Bill  
21 Kennedy, and they were -- there were all these land  
22 contracts and all these legal documents on land and

1 everything. So she was still trying to determine how  
2 they could be repaid for some of their investment and  
3 what could be done and what needed to be done on this  
4 corporation.

5 So I met -- she wanted from me to give him  
6 some information. So I took the file of that  
7 analysis and all those copies that we had made. So  
8 Mr. Kennedy had a lot of questions and had we done  
9 all sorts of things which we of course had not done.  
10 All we had done was a very cursory review.

11 So at that point in time, I believe -- I  
12 can't remember if we still had the boxes or they had  
13 already been returned to Mrs. Clinton at the Rose Law  
14 Firm, but it was my understanding that Mr. Kennedy  
15 was going to take that information, the information  
16 in the boxes and follow through to try to determine  
17 as to what assets the corporation still had.

18 Then I never heard anything about  
19 Whitewater again until -- let's see -- until I  
20 believe 1992.

21 Q That would have been involved with the  
22 campaign?

1 A Yes, that would have been, yes.

2 Q We are going to get involved in that in  
3 some detail.

4 A I can tell you also how those tax returns  
5 came about to be prepared.

6 Q Why don't you tell us that and then we will  
7 get into more detail on campaign contacts.

8 A Of course you know we had contacts with  
9 them during the campaign. In either late November or  
10 early December of '92, I was asked to come to a  
11 meeting at the Rose Law Firm --

12 Q Before you move on to this meeting --

13 A That had to do with the tax returns.

14 Q Let me ask you first, that first meeting  
15 you had with Mrs. Clinton and Bill Kennedy at the  
16 Rose Law Firm, that was subsequent to the filing of  
17 the first sets of corporate returns, subsequent to  
18 your obtaining the boxes of documents and subsequent  
19 to your cursory review of those documents?

20 A Yes.

21 Q What would have been the general time frame  
22 of this meeting?

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1 A I have no idea, but I know that it was a  
2 long time after we did that review. It was not like  
3 we did the review and here we met. It was a while  
4 after it.

5 Q So the returns were filed in July of 1990;  
6 is that correct?

7 A Uh-huh.

8 Q The first set of delinquent returns for  
9 Whitewater. Then you undertook an analysis of these  
10 boxes, a cursory analysis.

11 A Uh-huh.

12 Q When would that have ended?

13 A When we got the boxes, we quickly analyzed  
14 them. We were not -- remember, it was strictly pro  
15 bono. We were not going into -- it was understood we  
16 would not go into this big analysis or anything. We  
17 were doing something quickly, we did it and we got  
18 out of it. It would have been pretty quickly after  
19 the time we got the boxes. When we got the boxes I  
20 don't remember. It was sometime six months, a year.  
21 I was so little involved in Whitewater that  
22 Whitewater was not a big issue in my mind.

1           So Whitewater was not -- the Clintons were  
2 my clients. Whitewater was never a client.

3           Q   Before you testified that you thought that  
4 the meeting may have occurred six months after the  
5 filing of the first set of returns; is that correct?

6           A   It could have happened, because I think we  
7 got those boxes, those two boxes, in my mind it seems  
8 like a long time after we filed the returns. What  
9 I'm telling you is that if you can find that folder  
10 that says "analysis" it will tell you exactly when it  
11 was.

12          Q   We will definitely find that folder.

13          A   It could have been three or four months and  
14 I'm thinking six months to a year.

15          Q   It was certainly done within a year after  
16 filing the corporate returns?

17          A   Yes.

18          Q   So sometime prior to the summer of '91, you  
19 would have had completed the analysis of the boxes?

20          A   Oh, yes.

21          Q   And then you would have had soon thereafter  
22 a meeting at the Rose Law Firm with Mrs. Clinton and

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1 Bill Kennedy?

2          A   I can't remember if it was soon thereafter  
3 or a long time thereafter.

4          Q   Was it after the President had declared his  
5 intent to run for President of the United States?

6          A   I don't think so. I think it was before,  
7 but I don't really know.

8          Q   This meeting occurred?

9          A   Uh-huh.

10          Q   Which he asked you a number of questions.  
11 Then you said there was a second meeting which  
12 occurred at the Rose Law Firm?

13          A   Yes.

14               MR. COLE: Before we leave the first one,  
15 what was the purpose of the first meeting with Bill  
16 Kennedy and Mrs. Clinton?

17               THE WITNESS: The first meeting with Bill  
18 Kennedy and Mrs. Clinton, it was my understanding  
19 that Mr. Kennedy was going to help Mrs. Clinton try  
20 to establish legally what could be done with  
21 Whitewater and the assets, whatever alleged land and  
22 receivables, whatever. He was asking questions like

1 did we know -- did we have a plot of Whitewater, like  
2 how many lots were there and everything and was there  
3 any ownership.

4 We did not know anything about Whitewater.  
5 He was wanting to establish really -- I'm probably  
6 putting words into his mouth.

7 Instead of saying that, let me explain what  
8 my understanding of the meeting was. My  
9 understanding of the meeting was that he was trying  
10 to help Mrs. Clinton determine if there was  
11 anything -- again, still, if there was any assets  
12 left in Whitewater that they could be repaid and what  
13 needed to be done, okay, for the President and  
14 Mrs. Clinton to get some money back from their  
15 investment or something, what needed to be done.

16 He wanted to know -- he needed to know he  
17 was going to help Mrs. Clinton establish that, so he  
18 needed to know from us what had we done and what did  
19 we know about the assets of Whitewater.

20 Then he asked questions that really were  
21 legal questions that we had had nothing to do with.  
22 We had not been involved in, we had not done

1 anything. He wanted to actually know a lot more  
2 about the initial assets of Whitewater, what happened  
3 to them, tracing all the sales and the receivables  
4 and everything. We had not done anything like that.

5 All we had done was prepared tax returns,  
6 you know, and then after that, done a cursory review  
7 to try to figure out if there was anything left.

8 BY MR. JIAMPIETRO:

9 Q He asked you a lot of questions for which  
10 you didn't know the answers?

11 A I had no idea. He was going from a legal  
12 point of view, from an attorney's point of view. He  
13 wanted to establish so he could advise Mrs. Clinton  
14 as to what to do.

15 Q Was there a discussion that he was going to  
16 undertake a more detailed analysis of the records  
17 that you had collected?

18 A My understanding was that we were not going  
19 to do anything else and if the boxes were not back at  
20 the Rose Law Firm, we were to give the boxes back and  
21 he was going to do something with it.

22 Q Let me just follow up on that. So



1 subsequent to this meeting, did you deliver the boxes  
2 of Whitewater documents to the Rose Law Firm?

3 A Yes. If we still had them, we would have  
4 delivered them. I can't remember if we still had  
5 them or if they had already been delivered. The Rose  
6 Law Firm ended up with those boxes.

7 Q Would you have delivered all of the  
8 documents relating to Whitewater to the Rose Law Firm  
9 that you had in your possession?

10 A Not our files, but any records.

11 Q You would have delivered the books to the  
12 Rose Law Firm?

13 A The books from the corporation?

14 Q From the corporation.

15 A I do not know. The reason I am hesitant is  
16 because a lot of times I remember -- one big problem  
17 a lot of times with staff is to make sure that  
18 records were returned to clients. We had a storage  
19 place to store records from clients, and we liked to  
20 get rid of records. We didn't like to store records  
21 for clients. Sometimes we would find records for  
22 clients that clients would not get picked up or

1 something. We didn't have a person to deliver  
2 records. We would be calling a client and telling  
3 the client here are the records, you can pick them  
4 up.

5 MR. COLE: Let's take it a step at a time  
6 here. Let's start with the two boxes. Were those  
7 materials provided to the Rose Law Firm?

8 THE WITNESS: Yes. There were one or two  
9 boxes.

10 MR. COLE: That was sometime in connection  
11 with this meeting, before or after?

12 THE WITNESS: Yes.

13 BY MR. JIAMPIETRO:

14 Q Did you keep any copies of those documents?

15 A No. The only copies of anything I would  
16 have had is just what you find in my files. If you  
17 see in that folder it says "analysis of Whitewater,"  
18 we made copies of a whole bunch of things.  
19 Mrs. Clinton wanted us to make copies of anything  
20 that may have an implication on the assets or  
21 liabilities of the corporation. We made copies of  
22 articles of incorporation, stock certificate, land

1 contracts, anything like that we made copies and put  
2 them in that file.

3 Other than that, no. We never kept  
4 records, we never made copies of records for clients  
5 just to keep.

6 Q So you sent the two boxes you received to  
7 the Rose Law Firm?

8 A Uh-huh.

9 Q You also had received prior to receiving  
10 those two boxes documents from Charles James?

11 A Books.

12 Q The books.

13 MR. COLE: And perhaps the prior year's tax  
14 returns.

15 THE WITNESS: Yes.

16 BY MR. JIAMPIETRO:

17 Q Did you send those to the Rose Law Firm?

18 A I don't know. That was never my job so I  
19 don't know.

20 Q You never had a discussion of sending  
21 those?

22 A I don't remember. Eventually of course --

1 let me tell you what our procedure was.

2 Q Tell us what your normal record retention  
3 procedure was and then what happened here, because  
4 you do know that the two boxes went to the Rose Law  
5 Firm. Did you bring those boxes with you when you  
6 went to this meeting with the Clintons?

7 A No, not at all.

8 Q You know those were eventually delivered.

9 A Yes.

10 Q You know those were delivered but you don't  
11 know whether or not any of the other documents which  
12 you received prior to receiving those boxes were  
13 delivered.

14 A Eventually there were two, but I don't know  
15 when things were delivered. Our normal procedure --

16 MR. COLE: Let's slow down a bit. You said  
17 eventually they were. Why don't you tell us when  
18 they were or how you know that they were. He asked  
19 you about the books.

20 THE WITNESS: I have no idea when, but I  
21 know that they definitely were delivered. Our normal  
22 procedure for any client --

1 MR. COLE: How do you know that they were  
2 delivered, these particular books, the books you  
3 obtained from Charles James initially?

4 THE WITNESS: Because I remember that  
5 during the time of the campaign, the campaign was  
6 looking for records, and all of the records that they  
7 were looking for were found, you know. I don't know  
8 if we still had any of it or if the Rose -- I know  
9 that boxes we did not have them. I do not know if we  
10 still had those books or not.

11 MR. COLE: So is what you are saying that  
12 during the campaign you received a request for the  
13 Whitewater books and then you came to learn that the  
14 campaign had those or that you provided them? I'm  
15 not following you. .

16 THE WITNESS: No. All I am saying is  
17 this: During the campaign, we were asked a lot of  
18 questions, people came to our office to look over  
19 files. They called us. People from the Rose Law  
20 Firm, Carolyn Huber, really mainly Carolyn Huber was  
21 trying to track down records for the campaign in  
22 connection with the Clintons' personal information or

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1 Whitewater or anything like that.

2 We were called to request records, to ask  
3 for records. If there was anything left in our  
4 storage, records storage, it was delivered, not to  
5 the campaign people but to the Rose Law Firm, to  
6 Carolyn Huber at that time if there was anything  
7 left.

8 MR. COLE: Stop a minute, though, because  
9 that's a different thing. Do you know specifically  
10 whether the books that Charles James initially  
11 provided to you were ever turned over to the campaign  
12 or the Rose Law Firm? Saying that everything in your  
13 files was turned over to them may or may not be the  
14 same thing as saying the books may have been turned  
15 over to them because the books may have been lost,  
16 misplaced, given to someone else. Either you know or  
17 you don't about the books.

18 THE WITNESS: The books -- the whole time  
19 we have been in business we have not lost records of  
20 anybody, not even one piece of paper. There is no  
21 way that the books were lost or we lost any records.  
22 Any records that we had were delivered. They were

1 not delivered to the campaign. They were delivered  
2 back to the Rose Law Firm.

3 MR. COLE: How do you know that as opposed  
4 to delivered back to Charles James?

5 THE WITNESS: We never had any contact with  
6 Charles James anymore. We couldn't even find  
7 Mr. James.

8 MR. COLE: But do you have specific  
9 knowledge of the books? You said you had specific  
10 knowledge of the two boxes being delivered to the  
11 Rose Law Firm, you remembered that occurred. What  
12 I'm asking you is do you have similar specific  
13 knowledge about the delivery of the books that  
14 Charles James originally --

15 MR. JIAMPIETRO: I think she has testified  
16 pretty clearly that all the records were delivered to  
17 the Rose Law Firm.

18 THE WITNESS: All the records.

19 MR. COLE: Excuse me. That is not the same  
20 thing. Saying all the records were provided is not  
21 the same thing as saying yes, I know these particular  
22 records were provided. I'm just trying to determine

1 what you know and don't know.

2 MR. JIAMPIETRO: She said she --

3 MR. COLE: I understand what she believes.  
4 She said she believes that.

5 THE WITNESS: Those books could have been  
6 delivered to the Rose Law Firm with those boxes. I  
7 don't remember. I do not really know.

8 MR. COLE: That's the answer to my  
9 question. That's what I was trying to determine.

10 THE WITNESS: Let me explain something  
11 about delivering records back to clients. We  
12 never -- we did not have a courier or anybody that  
13 delivered records back to clients. Any time work was  
14 completed, either the records were delivered to the  
15 client with the work or if we felt like we may need  
16 them a little bit longer, as soon as we were finished  
17 with the records, the client would be called, the  
18 contact person.

19 In our situation the contact person was  
20 Carolyn Huber for records. We would have called her  
21 and said we are finished with the records. She  
22 normally would have picked them up herself if it was



1 something small because she lived near our office or  
2 she would have sent a courier from the Rose Law Firm  
3 to pick them up.

4 BY MR. COLE:

5 Q Let me show you a document Bates stamped  
6 133-1025 dated February 25, '92. Could you read the  
7 letter. First of all, did you prepare this note?

8 A Yes.

9 Q Could you read it for us.

10 A Yes. Jane was my secretary. I said  
11 "please track all Clinton personal returns we have  
12 prepared and give me a list of those in storage to  
13 retrieve tonight. Need here for Wednesday a.m. for  
14 appointment."

15 We had -- we kept in our files, in our  
16 current files three years of returns, two to three  
17 years for clients. Anything else was put in  
18 storage. Any time that we had a computerized list of  
19 where in storage -- in which box a particular return  
20 and everything would be. So I was going to go to the  
21 storage to retrieve them.

22 Q Why don't you read the rest of the letter

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1 and then I will have a question for you.

2 A The first one is "first year return  
3 prepared '84 or '85. Which list, collect all  
4 returns '90 and place in one place." Then "also  
5 collect all Whitewater returns and place in same  
6 place. One Whitewater return in storage, need box,  
7 et cetera and year."

8 And I put in here "feedback by 4:00 p.m.,  
9 please, thanks" and it is dated February 25, 1992 and  
10 it is initialed by me. And this was a note to my  
11 secretary just telling her what returns were out that  
12 we had outside and which ones she needed to trace for  
13 me for our computerized storage list so we would be  
14 able to get them.

15 Q All these returns were brought to one place  
16 for an appointment?

17 A Right.

18 Q Do you recall what that appointment was?  
19 Were these returns delivered to the Clintons?

20 A No. No, I don't recall February 25th.

21 MR. COLE: Let's take a break.

22 (Recess.)

1 BY MR. JIAMPIETRO:

2 Q I think we have obtained some documents  
3 which may be able to clarify the timing of your  
4 conversations with the Clintons with regard to  
5 Whitewater that occurred in 1990. I would like to  
6 show you first document Bates stamped 133-281, which  
7 you have reviewed before, which is the June 1, 1990  
8 letter from you to Hillary Clinton in which you  
9 transmitted the corporate income tax returns for  
10 Whitewater Development Corporation for the years  
11 1987, 1988 and 1989.

12 In that letter to Mrs. Clinton, you noted  
13 that it was very time-consuming to prepare these  
14 returns and you noted that many of the documents were  
15 missing.

16 You also previously stated that you had a  
17 telephone conversation between yourself, Governor  
18 Clinton, Mrs. Clinton and the Wades. I want to show  
19 you a document Bates stamped 133-271. Please take a  
20 moment to review that.

21 (Witness examined the document.)

22 Are these your notes?

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1 A Yes.

2 Q Could you please read them for us, perhaps  
3 starting with the date in the upper right-hand  
4 corner.

5 A The date is June 6, 1990, and they are my  
6 initials. It says "Whitewater Development." It says  
7 "R.D. Randolph, Little Rock (McDougal's partner or  
8 associate with Little Rock land), needed per  
9 telephone call conversation with B. and H. Clinton  
10 and Rosalee Wade. And First Bank Ozark; 1, copies of  
11 all notes receivable; 2, repossessions all after  
12 5/31/89; 3, file on sale of rest of land inventoried  
13 to Ozark Air approximately 1985; 4, plot of land,  
14 original purchase with tracts identified by number  
15 and sales; 5, notes payable. Bill Clinton will get  
16 from Gary Bunch from Kingston; 6, will analyze above  
17 to ask questions with Charles James one last time on  
18 A, inventory (land still on books) he filed last tax  
19 return reporting sale of balance of land; B, notes  
20 payable; C, shareholders."

21 Q Does this give you a better idea of when  
22 your phone call with Governor Clinton and

1 Mrs. Clinton and Rosalee Wade may have occurred?

2 A Yes, but I don't know the telephone  
3 conference was exactly that day, because I put in  
4 there needed per telephone conference, and I did not  
5 put down that was the date. It could have been on or  
6 about that time.

7 Q So it is your understanding that the  
8 telephone conversation would have occurred on or  
9 about June 6, 1990?

10 A Yes, on or before, and very close to that  
11 time.

12 Q And subsequent to the letter June 1st, 1990  
13 letter that you sent to Hillary Clinton in which you  
14 noticed that a number of documents were missing in  
15 preparing the returns?

16 A Yes, I'm sure.

17 Q In addition, we have tracked down the file  
18 that you produced to the Special Committee which  
19 lists "Whitewater Development Company analysis of  
20 company." Previously in your testimony you stated  
21 that from this file you would be able to get an  
22 understanding of when you received the boxes of

1 information relating to Whitewater from the analysis  
2 included in this file.

3 We gave you an opportunity to look at this  
4 file while we had a break.

5 A Yes.

6 Q From your review of this file, when would  
7 you have received the boxes of the information and  
8 when would you have done your analysis of those  
9 boxes?

10 A We would have received the boxes very close  
11 to the time of the analysis. The dates on those work  
12 papers are July and August.

13 Q 1990?

14 A 1990. So we would have received them  
15 probably sometime in July.

16 Q So to sum up basically what I think we  
17 determined here is that you sent a letter to  
18 Mrs. Clinton on June 1, 1990 in which you transmitted  
19 the Whitewater corporate returns for the three years,  
20 1987, 1988 and 1989, you noted in that letter that a  
21 significant amount of information was missing.

22 Subsequent to that letter you had a phone

1 conversation with Governor Clinton, Mrs. Clinton and  
2 Rosalee Wade at which you asked them or which you  
3 discussed obtaining information from Rosalee Wade and  
4 First Ozark Bank.

5 A Uh-huh.

6 Q Then subsequent to that phone conversation,  
7 a number of boxes were delivered to you containing  
8 information relating to Whitewater.

9 Does this give you a better idea of that  
10 situation and what you obtained in those boxes and  
11 what was -- was the information contained in the  
12 boxes responsive to the request that you made to  
13 Rosalee Wade or the requests that were made to  
14 Rosalee Wade and First Ozark Bank pursuant to this  
15 phone conversation?

16 A I think we got information on the land, but  
17 I don't remember that we got information about the  
18 notes payable and shareholders.

19 MR. COLE: Just so we are clear, you do  
20 recall that the boxes -- you obtained the boxes from  
21 Mrs. Clinton, but Mrs. Clinton told you she had  
22 obtained them from Mr. James?

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1 THE WITNESS: Yes.

2 MR. COLE: While these notes show  
3 discussions with the Wades and a list of things you  
4 wanted to obtain from Rosalee Wade or the Bank of  
5 Flippin, these boxes did not come from Mrs. Wade or  
6 the Bank of Flippin?

7 THE WITNESS: No, they did not.

8 MR. COLE: Do you know whether you obtained  
9 additional information from the Wades and perhaps the  
10 Bank of Flippin at the time?

11 THE WITNESS: We obtained some information  
12 from the Bank of Flippin at the Wades. But I don't  
13 remember -- we obtained some information on the  
14 phone, and I don't remember if the information, the  
15 records, whatever information we obtained from them  
16 came before the tax returns or after it. I was  
17 thinking that the information from the bank or  
18 something that the Wades sent us came before the tax  
19 returns were prepared.

20 BY MR. JIAMPINETRO:

21 Q Let's just clarify for a minute, because it  
22 appears from the notes of the conversation that



1 occurred that your conversation with the Wades would  
2 have taken place subsequent to your preparation of  
3 the returns for 1987, '88 and '89, because we have  
4 the June 1st letter transmitting those returns, and  
5 we have reviewed those returns and you have signed  
6 those returns and dated them June 1, 1990. And then  
7 the notes which we just reviewed with you, which  
8 appear to be notes of a telephone conversation  
9 between yourself, Rosalee Wade and Governor Clinton  
10 and Mrs. Clinton are dated June 6th, at which point  
11 you believe that it probably occurred on or about  
12 that date?

13 A Yes, but what I mean is -- let me look at  
14 those notes again. I think you put them right behind  
15 here.

16 In looking at those notes, remember what I  
17 said? I am not putting down a date on that telephone  
18 conference. I just put down "needed per telephone  
19 conference with B. and H. Clinton and Rosalee Wade."  
20 It is possible that I may have made this note to the  
21 file a few days later.

22 I may have been real busy or something.

1 Q But you wouldn't have made it a week or a  
2 month later?

3 A Not a month later. It would have been  
4 within that period of time, but I'm not saying that  
5 it had to be necessarily this date.

6 Q It might have been --

7 A I'm not putting a date by the telephone  
8 conference.

9 MR. COLE: I'm still unclear on one point.  
10 Prior to the discussion that you had with the Wades  
11 and Clintons, had you obtained any information at all  
12 from either the Wades or the bank, either by  
13 telephone or by documents?

14 THE WITNESS: We had obtained I believe  
15 some information from the Wades. I believe they  
16 had --

17 MR. COLE: It may well be that you received  
18 some information before this telephone conversation  
19 with the Clintons and Wades and then received  
20 additional information afterwards is what I'm getting  
21 at.

22 THE WITNESS: It is possible.

1 MR. COLE: You don't have any specific  
2 recollection one way or another?

3 THE WITNESS: No. It is possible.

4 MR. COLE: You may have received some  
5 information that you used to prepare the records and  
6 you may have needed additional information and you  
7 may have received subsequent information after you  
8 had the telephone conversation with the Wades and the  
9 Clintons?

10 THE WITNESS: Yes, yes.

11 BY MR. JIAMPIETRO:

12 Q Let's briefly move on to the questions we  
13 were addressing just before we took a break, and that  
14 is the meeting you had just described that took place  
15 at the Rose Law Firm between yourself, Mrs. Clinton  
16 and Bill Kennedy.

17 A Uh-huh.

18 Q Could you please -- we were trying to  
19 ascertain the process by which the second set of  
20 Whitewater corporate tax returns were filed in the  
21 summer of 1993, three years after the initial set of  
22 three-year delinquent returns had been filed in the

1 summer of 1990. You had just described that  
2 meeting. For the sake of the record, could you just  
3 describe that meeting one more time.

4 A The meeting with Bill Kennedy and  
5 Mrs. Clinton had nothing to do with the preparation  
6 of the second set of tax returns, nothing at all.  
7 There was another meeting that had something to do  
8 with that. That meeting was strictly for -- it was  
9 my understanding that Mr. Kennedy was trying to help  
10 Mrs. Clinton to establish what needed to be done  
11 about Whitewater, if there was any way that --

12 Q That's clear, that's clear. Why don't we  
13 move on to the second meeting that occurred.

14 A Okay.

15 MR. COLE: Let's start with who and then  
16 let's do when and then let's do what was covered. So  
17 first, who was there?

18 THE WITNESS: It was Vince Foster, Web  
19 Hubbell, Carolyn Huber and myself. Web Hubbell left  
20 before the meeting ended. He had to be somewhere  
21 else, so he was not there for the whole meeting.

22 MR. COLE: When did this occur?

1 THE WITNESS: It happened I believe -- it  
2 was either late November or the very first week of  
3 December of '92.

4 MR. COLE: It was after the Presidential  
5 election?

6 THE WITNESS: It was after the Presidential  
7 election.

8 MR. COLE: It was at the Rose Law Firm?

9 THE WITNESS: It was at the Rose Law Firm.

10 MR. COLE: Who contacted you to ask you to  
11 attend the meeting?

12 THE WITNESS: I cannot remember if it  
13 was -- I believe it was Carolyn Huber that contacted  
14 me.

15 MR. COLE: Now, why don't you tell us what  
16 you remember happened at the meeting, walking through  
17 from beginning to end.

18 THE WITNESS: The meeting -- at the  
19 meeting, I met Mr. Foster for the first time. I had  
20 talked to Mr. Hubbell on the phone before, I think  
21 during the campaign, but at that meeting that's the  
22 first time I ever talked to Mr. Foster.

1 MR. COLE: Let's drop the footnote here.  
2 We will come back and talk about what you talked with  
3 Mr. Hubbell about. Let's continue on with this  
4 meeting.

5 THE WITNESS: The meeting was strictly they  
6 wanted some projections done for 1992, the regular  
7 income tax projections we did for the Clintons every  
8 year before the end of the year. They wanted those  
9 income tax projections to be done, and they wondered  
10 what we needed, if we had all the information or what  
11 was needed.

12 MR. COLE: Had you done similar projections  
13 in past years for the Clintons?

14 THE WITNESS: Just about every year during  
15 the last few years.

16 BY MR. JIAMPIETRO:

17 Q This was for their personal tax returns?

18 A Personal, yes. That was for their personal  
19 tax returns. So we started going over some of the  
20 things, some of their income and of course we  
21 considered the additional income that Mrs. Clinton  
22 would have on selling her partnership interest in the

1 Rose Law Firm and all of that. And then at that  
2 point in time I was told that I needed to consider,  
3 again, from Whitewater -- I needed to consider they  
4 were going to be getting a thousand dollars from  
5 Whitewater, that Whitewater had been sold for a  
6 thousand dollars and I needed to consider that.

7 I think I was asked was there going to be a  
8 gain or what or what implications. They wondered  
9 what I thought about it.

10 MR. COLE: So they told you that as a  
11 factual matter, the Clintons' interest in Whitewater  
12 had been sold for a thousand dollars?

13 THE WITNESS: Yes.

14 MR. COLE: That had already occurred or it  
15 was anticipated that would occur before year end?

16 THE WITNESS: I think it had not occurred,  
17 but they had already negotiated that that's what was  
18 going to happen.

19 MR. COLE: And it would happen before year  
20 end?

21 THE WITNESS: And it would happen before  
22 year end and that I needed to consider that in the

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1 projections.

2 MR. COLE: What did they ask you about  
3 that?

4 THE WITNESS: I cannot remember exactly,  
5 but I believe that they asked me about the tax  
6 implications and they knew that I had been furnished  
7 a copy of whatever was released to the press, that  
8 report from Colorado on Whitewater, to have some  
9 informational basis.

10 I think that we decided at that time either  
11 to consider that as a -- I can't remember if we  
12 considered it as a zero gain or loss from Whitewater  
13 at that time because we didn't really know what to do  
14 at the time. We didn't have enough information  
15 still.

16 MR. COLE: Did they specifically ask you  
17 about the Clintons' tax basis in Whitewater? Do you  
18 recall that? You just mentioned tax basis.

19 THE WITNESS: I don't remember the specific  
20 questions. I just remember that we discussed these  
21 were the items and we discussed what were going to be  
22 the tax implications. On things that we were not



1 sure, we made some assumptions. I had to get some  
2 assumptions and we discussed possible assumptions to  
3 make on the things we didn't know for sure.

4 MR. COLE: Why did you need assumptions?  
5 Why did you need to make assumptions?

6 THE WITNESS: Well, because at that point  
7 in time, from my knowledge, nobody really knew for  
8 sure -- I definitely did not know -- at that point in  
9 time I definitely did not know what was their basis  
10 in Whitewater. Even with all -- I had done a cursory  
11 review. After that, the accounting firm in Colorado  
12 that supposedly specializes in forensic accounting,  
13 they did supposedly an in-depth review and they  
14 reconstructed Whitewater books from the first day.  
15 Still with all of that there was just not enough  
16 information on Whitewater to really know for sure  
17 what had happened.

18 MR. COLE: When you say what had happened,  
19 there was not enough information to know for sure  
20 what the Clintons' tax basis was in Whitewater?

21 THE WITNESS: What the Clintons' tax basis  
22 was, because Whitewater started as a joint venture

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1 and they took some deductions. We really did not  
2 know exactly.

3 BY MR. JIAMPIETRO:

4 Q Let me read to you some notes that were  
5 taken by Vince Foster. I'm not sure exactly of the  
6 date of these notes.

7 MR. COLE: Right. We don't know -- as far  
8 as I know, we don't know whether these notes were  
9 taken at the time of this meeting or not. They may  
10 or may not have been.

11 BY MR. JIAMPIETRO:

12 Q But there are some references in here to  
13 conversations that may have occurred with you or  
14 discussions that may have occurred, and I just would  
15 like to see if they refresh your memory.

16 MR. COLE: In particular -- and I'm sure  
17 this is what you are getting at, Joe -- as he reads  
18 you the notes, if you can tell whether the notes were  
19 made at or immediately after this meeting, then we  
20 might be able to determine whether they relate to the  
21 meeting or other conversations he had with you.

22 BY MR. JIAMPIETRO:

1 Q One note that is listed here states "JR  
2 resisted any gain since inconsistent with saying we  
3 had a loss -- zero is arbitrary." JR, I was thinking  
4 Yoly Redden since you pronounce your name Jolly.

5 A Those notes -- the Independent Counsel  
6 asked me about those notes. I don't think those  
7 notes had anything to do with that meeting. At that  
8 meeting there was nothing in-depth discussed about  
9 Whitewater as far as I remember. Those notes had to  
10 do, during the time that I was preparing the 1992 tax  
11 return that at that point in time Mr. Foster and  
12 myself talked back and forth numerous times, and I  
13 talked to the accountants in Colorado.

14 We were trying to determine what really  
15 should be claimed in the return, in the disposition  
16 of Whitewater, because I firmly felt that they lost  
17 money. I felt that there was a loss. But I did not  
18 think that we should take a loss if we didn't have  
19 solid information, canceled checks and everything to  
20 really support the basis and also had the information  
21 as to actually what deductions had been taken and  
22 everything.

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1 But I felt in my mind that they had a loss,  
2 that they had incurred a loss based on everything  
3 that I had seen. One other thing that happened when  
4 we were doing that cursory review is that the  
5 governor's mansion had been remodeling, had been in a  
6 remodeling stage for several years during the last  
7 few years the Clintons lived there, probably the last  
8 two or three years.

9 When we were trying at the end to piecemeal  
10 things, and I never saw the canceled checks, but  
11 somebody made a list -- I think it was Carolyn --  
12 made a list of the money they had spent actually and  
13 the deductions they had taken going back to the tax  
14 returns, because I never had the tax returns for  
15 those prior years, the ones that I did not prepare.  
16 Somebody made that list and provided it to us.

17 BY MR. JIAMPINETRO:

18 Q I think what we should do, Ms. Redden,  
19 before we go into this area, I think we will come  
20 back to this probably, I think we ought to try to  
21 stay on that one meeting we were discussing since we  
22 determined these notes don't relate to that meeting.

1 Let's take that meeting and then go back to these  
2 notes after.

3 Let's go back to discussing the meeting. I  
4 think you were just talking to us that you had  
5 discussed that they had received \$1000 or were going  
6 to receive \$1000 from the sale of their Whitewater  
7 stock.

8 A Yes. We were discussing, since still at  
9 that point in time there was not definite information  
10 on whether there was a loss, how much of a loss, what  
11 really had happened, we were trying to decide how to  
12 proceed on that, and I was trying to get some  
13 direction from them as to what they wanted me to do,  
14 what kind of assumptions to make or whatever for  
15 their projections.

16 Really that was basically it as far as  
17 Whitewater. I think we decided to use zero gain or  
18 loss for the projections.

19 Q At that meeting?

20 A At that meeting. That was the assumption  
21 for the projections. That had nothing to do with  
22 filing the return later on. That was just an

1 assumption for the projection. Those projections are  
2 in the file, in the 1992 income tax file. Those  
3 projections, a copy of those are there, so you can  
4 look at those projections and see what we did.  
5 Besides that, we did various assumptions. There were  
6 various things that were discussed at the meeting,  
7 strictly projecting, how to do the projections,  
8 because Mrs. Clinton could sell her interest in '92  
9 or '93 and various things like that.

10 MR. COLE: Her interest in the Rose Law  
11 Firm?

12 THE WITNESS: Yes, in the Rose Law Firm.  
13 BY MR. JIAMPIETRO:

14 Q Let's focus on Whitewater. You discussed  
15 the sale of the stock and that they would be getting  
16 a thousand dollars and how to treat that on their  
17 return. Was there any other discussion of  
18 Whitewater?

19 A Yes, yes. I asked them had the rest of  
20 their returns -- I didn't know what happened to  
21 Whitewater after that because I was really not  
22 involved. So I asked if the rest of the returns had

1 been filed for Whitewater, and they said to their  
2 knowledge, no. I believe they gave me at that point  
3 in time also -- I believe it was at that meeting or  
4 around that time that they got another letter from  
5 the IRS, similar to the one before that Mrs. Clinton  
6 had received back in late '89 or '90 about one of  
7 those years being delinquent.

8 They told me -- I'm almost positive -- I'm  
9 not sure, but I believe it was at that meeting they  
10 gave me that letter and told me they wanted to answer  
11 that letter the same way I responded to the other  
12 letter.

13 Then I asked about had the returns been  
14 filed, they said no, they had not been filed, nothing  
15 had been done about that. They were not going to  
16 worry about it. Since they were selling the  
17 interest, they were going to let Mr. McDougal worry  
18 about that.

19 Then I pointed out to them that those  
20 returns that were delinquent were returns where the  
21 President and Mrs. Clinton had been shareholders  
22 during those years, and really they would have been

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1 liable as shareholders for those returns and they  
2 really needed to file those returns. They said well,  
3 they had not discussed that, they had thought that  
4 they were not going to do it and they didn't know  
5 what to do about that.

6 So I don't know if a decision was made, but  
7 I remember going back into our firm and talking to  
8 our managing partner, and our managing partner said  
9 that -- I can't remember if I had already talked to  
10 him before -- I cannot remember. But our managing  
11 partner said that we would do them pro bono and that  
12 we would do them pro bono.

13 So I told them --

14 Q Let me clarify. A decision was made by the  
15 managing partner in your firm that the Whitewater  
16 corporate tax returns for the years 1990 and '91 --

17 A The fiscal year ending in '92, the three  
18 years that were delinquent.

19 Q That they would be done on a pro bono  
20 basis?

21 A Yes.

22 Q Were they in fact done on a pro bono basis?



1       A    Yes. There was very little work done on  
2 that. The reason we did the work was because we  
3 didn't have any idea about Whitewater, we couldn't  
4 figure out the books, there was a problem with the  
5 records. These ones, all we did is we -- they were  
6 supposed to get us the information but they didn't.

7       So I ended up -- and Carolyn Huber called  
8 the bank also. But we never got it. I called the  
9 bank I don't know how many times and finally we got  
10 the information on just the collections and  
11 receivables, the interest payments on the notes, very  
12 basic information.

13       We didn't have any books or anything. We  
14 didn't try to get any books. We just got that basic  
15 information and we just updated the returns from the  
16 last ones we had filed and filed those returns on  
17 that basis.

18       MR. COLE: One clarifying question. When  
19 you filed the initial returns for Whitewater, you had  
20 your own CPA firm, Redden & Company; is that  
21 correct?

22       THE WITNESS: Yes.

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1       MR. COLE: At the time you had this  
2 discussion with your managing partner, it was after  
3 you had gone to Brown, Rogers & Company?

4       THE WITNESS: Right, right.

5       MR. COLE: That happened in the interim?

6       THE WITNESS: I became affiliated with  
7 Brown, Rogers & Company on December 1, 1992.

8       MR. COLE: Does that tell us this meeting  
9 took place after December 1, 1992?

10       THE WITNESS: I told you that it was either  
11 late November or the very first week of December. If  
12 it was late November, I would have already had --

13       MR. COLE: You would have known that you  
14 were moving over there.

15       THE WITNESS: I would have known I was  
16 moving over there December 1st. It was one of those  
17 times.

18       Anyway, at that meeting, they were not  
19 planning to file the returns. I told them that I  
20 felt that they needed to be filed because the  
21 President and Mrs. Clinton had been involved in that,  
22 and they agreed when we told them we would do them.

1 There was a letter then from Mr. Foster that day  
2 saying they would like us to do that.

3 BY MR. JIAMPIETRO:

4 Q Let me ask you a couple of additional  
5 questions. In your June 1, 1990 letter to  
6 Mrs. Clinton, you noted in that letter that the tax  
7 return for the fiscal year ending May 31, 1990 is due  
8 on August 15th of this year.

9 A Yes.

10 Q So you highlighted that there was a return  
11 that was going to be due.

12 A Yes.

13 Q Did you ever have any discussions with  
14 Mrs. Clinton about the Whitewater corporate tax  
15 returns subsequent to the filing of the 1987, '88 and  
16 '89 returns?

17 A I don't remember. I had several  
18 discussions with Mrs. Clinton about that she wanted  
19 to -- about her concern about getting her money back  
20 out of Whitewater and what to do and her liability as  
21 a shareholder because the tax returns were not done  
22 or potential delinquency.

1 There were several discussions, but I don't  
2 remember anything else except that I do remember that  
3 when Mrs. Clinton had us prepare the first tax  
4 returns, she thought that Whitewater was going to pay  
5 for them. I don't think she wanted to undertake a  
6 whole bunch of work for Whitewater when she already  
7 felt like she had lost a lot of money and still she  
8 was having to pay more money when she was not going  
9 to get any back.

10 Q That was because Whitewater didn't pay for  
11 the tax returns, the Clintons paid for the tax  
12 returns for the Whitewater corporation for those  
13 three delinquent years, '87 through '89?

14 A Yes.

15 Q You said you had several conversations with  
16 Mrs. Clinton regarding a number of issues. Were  
17 those conversations subsequent to the filing of these  
18 delinquent returns?

19 A I am sure, because she was very concerned.  
20 She had several concerns. One, she was concerned  
21 about their liability in connection with this  
22 corporation out there that had all these tax returns

1 that were not being filed.

2 Q Can you give us some more detail point by  
3 point.

4 A I don't remember point by point at all. I  
5 just remember, and I mean I was not -- in connection  
6 with Whitewater, all we were paid for is to do those  
7 tax returns. I was never hired or paid to do  
8 anything else for the Clintons for Whitewater.

9 Q So we keep a clean record, why don't we go  
10 point by point. You mentioned the first point she  
11 was concerned with the liability.

12 A It is the same thing. Mrs. Clinton, as far  
13 as I remember, and as far as my knowledge, was never  
14 a corporate attorney in the sense of knowing  
15 corporate law. So she was concerned about the  
16 different issues in connection with it.

17 I am not a corporate attorney. I'm a CPA,  
18 but as a CPA I deal a whole lot with corporations. I  
19 have been dealing with corporations for years. I  
20 work a lot with corporate attorneys and tax attorneys  
21 in connection with the corporations.

22 When we were working on these, it was my

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1 understanding that she really had very little  
2 knowledge as to what were the implications as far as  
3 their liability and what --

4 Q You weren't familiar with whether or not  
5 she was obtaining any type of advice from any of the  
6 lawyers within the Rose Law Firm?

7 A I'm not familiar. The only time I know she  
8 was obtaining some advice is when I met with  
9 Mr. Kennedy. I believe, in some things that I  
10 remember telling her, I remember telling her these  
11 are the possibilities, but she could talk to  
12 someone. There were tax attorneys and corporate  
13 attorneys at the Rose Law Firm that she could talk  
14 with. I remember discussing that. I don't know if  
15 she ever did.

16 Q Let's go back to these several  
17 conversations.

18 A I don't know how many.

19 Q Were they by telephone?

20 A Yes.

21 Q Were they just between you and  
22 Mrs. Clinton?

1 A Yes.

2 Q And the points that were discussed again  
3 were the liability, her potential liability for  
4 failing to file the corporate returns?

5 A She was concerned about what were all the  
6 implications.

7 Q Why don't you discuss those briefly, what  
8 you discussed.

9 A I don't remember exactly. She was  
10 concerned and she really wanted advice. She was  
11 concerned about what were all the implications. They  
12 invested this money, they never got any money back.  
13 She didn't even know what was the status of the  
14 corporation. She didn't know who the corporation  
15 owed money, could she ever be liable for any of  
16 that. She didn't know any of that. We found out the  
17 franchise taxes had not been filed. That means that  
18 would revoke the charter of the corporation. Was  
19 this still a corporation. There were lots of tax and  
20 legal issues involved, and she was concerned about  
21 all the possibilities.

22 I told her the possibilities as far as I

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1 knew, but I told her she needed to pursue that  
2 further with a corporate attorney to advise her on  
3 those things. Again, she was -- with all her  
4 concern, she didn't want to spend much money on  
5 something where she felt like she had already spent,  
6 she felt like -- I remember at the time in talking  
7 she felt like they had put in 60 to \$80,000 or so.  
8 She felt like they had put in a lot of money and not  
9 gotten any money back. She didn't want to put in  
10 anymore money.

11 MR. COLE: Just one more question, again,  
12 context in time. The series of discussions you just  
13 described with Mrs. Clinton, do you recall whether  
14 those took place before or after your meeting with  
15 Mr. Kennedy when Mrs. Clinton asked you questions?

16 THE WITNESS: Some of them were before.  
17 The one thing that you need to understand about my  
18 dealings with Mrs. Clinton is this: When I first  
19 started doing work for Mr. and Mrs. Clinton,  
20 President and Mrs. Clinton, I met with her. She  
21 would make lists, she was giving me the information.  
22 She was the person that I was dealing with.



1           Probably after a year or two or three  
2 years -- I can't remember how long -- I know during  
3 the last few years I was having less and less to do  
4 with her because she was very busy being a trial  
5 attorney. She was in all kinds of committees for the  
6 Governor and everything, she was on all kinds of  
7 boards, all kinds of national committees.

8           BY MR. JIAMPIETRO:

9           Q    We understand. So she didn't have time --

10          A    I was doing more and more talking with  
11 Carolyn Huber as far as giving information and then  
12 just writing her letters with conclusions.

13          MR. COLE: Off the record.

14          (Discussion off the record.)

15          BY MR. JIAMPIETRO:

16          Q    Mr. Cole raised a good point, that I think  
17 we should return to the analysis that you undertook  
18 of the information received in the summer of 1990.  
19 You noted that there were several boxes of  
20 information which were delivered to you and that you  
21 undertook a cursory review of that information. What  
22 were the results of that review?

1          A    Remember one thing. That was a very  
2 cursory review. We were not hired to do it. We were  
3 just doing something strictly pro bono.

4                With those parameters, also during the time  
5 that we were doing that, they were compiling, "they"  
6 meaning -- I don't know if Carolyn Huber or  
7 Mrs. Clinton, somebody helping her was compiling a  
8 list of all the deductions they had taken from  
9 Whitewater from the beginning, which is somewhere in  
10 the file. They compiled it. I never saw those prior  
11 year returns. I never traced those deductions.

12               They compiled a list of all the deductions  
13 taken and they also compiled a list of the money that  
14 they had invested from whatever canceled checks they  
15 could find. We had nothing to do with that.

16          Q    This was undertaken at the same time you  
17 were doing your analysis?

18          A    I think it was around the same time,  
19 because we got that in the file somewhere in that  
20 same file, if I remember correctly. She was wanting  
21 to know what was her basis if she sold it, could she  
22 take a loss, did she have a gain. She was wanting to

1 know that. She was wanting to know what were the net  
2 assets of the corporation.

3 Q Did you find out any of this?

4 A Not really, we didn't, because we just  
5 didn't have complete information and we were doing a  
6 very cursory review.

7 The things -- we arrived at some  
8 conclusions together based on assumptions like, for  
9 instance, on the list of -- we took the list that  
10 they prepared of the money invested minus the  
11 deductions that actually were taken on the tax  
12 returns to arrive at some sort of a basis based on  
13 the information they gave us. It was just a very  
14 rough assumption.

15 Then also we -- it appeared at that point  
16 in time we did find out what was owed to the bank,  
17 that last bank note, the big bank note that was  
18 almost paid. We found out from the bank what was  
19 owed to the bank. They found out or we found out,  
20 somebody found out what was owed to the bank.

21 Then also it was determined what were the  
22 receivables of the corporation. If I remember

1 correctly at that time, there was something like --  
2 really we didn't find that out I don't think from  
3 those records. I think that they got the  
4 information, somebody provided to us the information  
5 about what we sold.

6 What was owed to the bank, what were the  
7 receivables. I don't know if that came from the  
8 Wades.

9 Then we basically jointly came up with some  
10 assumptions that it appears that --

11 Q You said "jointly." What do you mean by  
12 that?

13 A Between Mrs. Clinton and the Wades and  
14 Carolyn Huber and everybody that was involved trying  
15 to piece together the information. Somebody prepared  
16 a list of the deductions taken.

17 Q This was all taking place in the summer of  
18 1990?

19 A Sometime around there, yes, because this  
20 all came about at about the same time. I had nothing  
21 to do with preparing those lists. I never saw their  
22 previous year tax returns or went through tax returns

1 trying to find deductions. I didn't even know until  
2 all this happened that there was interest deductions  
3 taken in the past had anything to do with  
4 Whitewater.

5       Anyway, that was done by them, and we took  
6 all the information that was given to us, and if I  
7 remember from those boxes, we really didn't find out  
8 much additional information except that I think we  
9 found just -- I'm trying to think. We found some  
10 additional information on the corporation. I think  
11 we were able to -- it really raised a lot more  
12 questions. We weren't sure how much the stock was  
13 really owned, who owned the stock, what stock was  
14 issued.

15       We were only trying to do, really to gather  
16 pertinent information for her to see how to proceed,  
17 for anybody to proceed.

18       Q   Did you ever do a formal report for her?

19       A   No, not at all.

20       Q   How did you report back your findings to  
21 her?

22       A   Just talking to her.

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1       Q   How many hours did you or your firm  
2 spend -- this was while once again you had your own  
3 company?

4       A   Uh-huh.

5       Q   How many hours did you and your firm spend  
6 on this analysis?

7       A   The analysis itself?

8       Q   Yes.

9       A   I have no idea, but it would have been  
10 probably -- remember, we are doing this pro bono. I  
11 was a very small firm. I doubt that we would have  
12 spent any more than a few hours. I am guessing, you  
13 know, six to 12 hours or something like that.

14       Q   How much time would you have spent on  
15 discussing the results --

16       A   I am talking making copies and going back  
17 and forth and everything.

18       Q   -- the results with Mrs. Clinton?

19       A   Very little time. After that I remember  
20 talking to Mrs. Clinton several times because she was  
21 trying to decide what to do with this, and she was  
22 trying to -- I remember at that point in time when

1 they gave us the list of the money that had been  
2 invested, we did not -- we asked them did they have  
3 canceled checks for all these things. Some of them  
4 they did not have canceled checks. Some of them they  
5 did not have canceled checks and they just knew that  
6 they had invested that money from payments to the  
7 banks or something.

8 There were several -- at that point in  
9 time, there were several bank statements missing.  
10 The Clintons had several bank accounts, and several  
11 of their bank statements were missing because of  
12 again the remodeling, and Carolyn Huber was the one  
13 trying to find the bank statements.

14 Q Let me ask you a question --

15 A My time involvement in this was very  
16 small.

17 Q That I understand.

18 A There was probably a clerical person who  
19 may have made copies and maybe somebody else.

20 Q The six to 12 hours you discussed, was that  
21 your time spent on the analysis?

22 A No, no.

1 Q You said before basically that the file  
2 which you produced to us which said "analysis of the  
3 company" was the result of that review. I'm just  
4 looking through this file.

5 A Are those work papers or are those copies  
6 of documents?

7 Q A lot of them are work papers. But there  
8 are numerous notes and research.

9 MR. COLE: Let's let her look through the  
10 file.

11 THE WITNESS: If I remember, we made a  
12 tremendous amount of copies.

13 BY MR. JIAMPIETRO:

14 Q I think there are about a hundred pages of  
15 notes.

16 A This is copies. This is not --

17 Q This is not what you prepared?

18 MR. COLE: Let's note the number of the  
19 document, starting with document number 133-0000361.

20 THE WITNESS: Let me start at the front.

21 MR. COLE: Just a second. Let me state the  
22 numbers so we know what you are looking at here,



1 because we don't have a video camera running here.  
2 Through 133-0000441.

3 THE WITNESS: This we did not prepare, have  
4 anything to do with it.

5 MR. COLE: When you say "this," please  
6 refer to the number.

7 THE WITNESS: 133-0000441.

8 MR. COLE: The last three numbers will be  
9 fine.

10 BY MR. JIAMPIETRO:

11 Q May I make a suggestion here? I think in  
12 terms of efficiency, why don't you take a moment to  
13 review the pages and then we can kind of get an idea  
14 of the overall effort that was involved.

15 A Let me count the work paper pages. The  
16 rest of it, there were just copies made.

17 (Witness examined the document.)

18 The other thing, I do not know that these  
19 work papers did not come also from the other files  
20 that we may have made.

21 Q I would point out that a lot of these note  
22 Alison Burton in the right corner.

1 A Okay.

2 (Witness examined the document.)

3 I counted 22 pages so far. A lot of these  
4 things were not prepared -- 24 --

5 Q These are notes that appear to be --

6 A 25.

7 Q -- her notes.

8 A 26, 27. There are 32 pages of anything  
9 that we prepared, and with that I am including things  
10 like this page, there is only two lines in there. So  
11 I mean the rest of them were just copies of things.

12 Q So about a little more than -- about a  
13 little less than a third of the pages were work  
14 papers prepared by someone in your firm. That's  
15 fine.

16 A The rest of it --

17 Q That's consistent with having spent six to  
18 12 hours on it?

19 A We did not spend a lot of time. It is also  
20 possible that some of these work papers, you will  
21 have to look at the date. These ones are all dated  
22 July and August. Sometimes if we are working on a

1 file and we have a work paper that comes from another  
2 file, we will make a copy and put it in the file.

3 Q Let me return to the question. That  
4 answered my question, thank you very much.

5 Let me return to the question in terms of  
6 reporting back to Mrs. Clinton, you would do that by  
7 telephone?

8 A Yes. Really, at this point in time, like I  
9 mentioned, we were trying to assist her to decide how  
10 to follow-up. We were trying to do it at a minimum  
11 amount of our time. Also they were doing some work  
12 themselves, "they" meaning Mrs. Clinton, Carolyn  
13 Huber. They were making lists of the deductions.  
14 They were looking at the tax returns. They were  
15 making lists of the canceled checks or money they had  
16 invested. I believe that they may have obtained the  
17 information from the bank as to the actual amount of  
18 the notes and the notes receivable and all of that  
19 and given that to us.

20 So we were going back and forth with  
21 Carolyn Huber. Some of the information may have  
22 surfaced at different times. So I may have talked to

1 Mrs. Clinton several times, just telling her what I  
2 thought.

3 MR. COLE: Did you reach any conclusion as  
4 to how much money the Clintons had invested in  
5 Whitewater total?

6 THE WITNESS: No. We never -- even when I  
7 prepared the '92 tax return, I still could not feel  
8 like that anybody had established definitely how much  
9 they had invested. Even the report from the Colorado  
10 accounting firm which they did an in-depth review,  
11 still it looked to me from the report that  
12 assumptions were made.

13 MR. COLE: Were you able to come to any  
14 conclusions about the net value or the net worth of  
15 the corporation?

16 THE WITNESS: What we did at that time, and  
17 again it is with the help of Mrs. Clinton, is we made  
18 the assumption that the rest of the liabilities,  
19 except for the bank, were not going to be paid  
20 because there were companies that were connected with  
21 Mr. McDougal. So if we looked at the receivables  
22 minus the note that was due to the bank, then we

1 thought that was the net asset and maybe something  
2 could be received back from that.

3 At that point in time, if I remember  
4 correctly, the receivables were 60,000-something and  
5 the note due to the bank was 13,000-plus, something  
6 like that, 13,000, 17,000 or something like that. It  
7 looked like there were some net assets that the  
8 company had.

9 MR. COLE: Do you think Mrs. Clinton left  
10 the discussions that she had with you with an  
11 understanding that there was some value in the  
12 corporation?

13 THE WITNESS: Yes.

14 MR. COLE: That it had some positive net  
15 worth?

16 THE WITNESS: Yes, we thought there was  
17 some value. But we didn't know what kind of -- the  
18 things she needed to do, what kind of time was it  
19 going to have to take, what kind of money was she  
20 going to have to spend to determine to really trace  
21 all this, the land, and all the things that were  
22 mentioned by Mr. Kennedy that needed to be done.

1 MR. COLE: In your June 1, 1990 letter at  
2 page 133-0000282, it indicates, and I will read it  
3 "in analyzing the last balance sheet and looking  
4 strictly at book value of assets, the liabilities  
5 exceed assets by 61,721."

6 I understand this was the letter you sent  
7 before you performed the cursory analysis that you  
8 just described, but can you help me understand how  
9 this letter indicated what I would call a negative  
10 net worth of approximately 61,000 and what you just  
11 indicated as a positive net worth.

12 THE WITNESS: The difference is this: In  
13 here we were going from the books and saying the --

14 BY MR. JIAMPIETRO:

15 Q "In here," you are referring to the June  
16 1st letter?

17 A Yes. In the June 1st letter, we were  
18 talking about the books. The books showed the  
19 liabilities exceeded assets by that much. Remember  
20 one thing that I just said. When we did that cursory  
21 review, based on my information from Mrs. Clinton, we  
22 were making the assumption that most of the

1 liabilities except the one to the bank were for  
2 companies that were related to Mr. McDougal. We were  
3 making the assumption that we didn't know how those  
4 liabilities had been incurred because she didn't  
5 understand why were the liabilities incurred. It was  
6 my understanding they bought land, they sold it. So  
7 we didn't -- she didn't understand why the other  
8 liabilities.

9 MR. COLE: If I can interrupt you, because  
10 at least for some of us this is an important point.  
11 Your testimony is at the time you discussed this with  
12 Mrs. Clinton and the two of you looked at these  
13 liabilities or payables by the corporation to the  
14 companies you understood were affiliated with  
15 Mr. McDougal, neither you nor she had any knowledge  
16 as to what the reason was for those liabilities; is  
17 that correct?

18 THE WITNESS: Right, we had no knowledge.  
19 We were wondering why those liabilities were there.  
20 It was her understanding, and again a lot of the  
21 information that was given to me, it was the  
22 understanding of what Mrs. Clinton thought was the

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1 purpose for the investment, what was going to  
2 happen.

3 What I was told is that they invested in  
4 some land that was going to be subdivided and sold  
5 and they were going to do collection of receivables,  
6 somebody was going to be paid commission to sell the  
7 land, and after that somebody was going to pay  
8 commissions to sell the land. And after that, after  
9 the bank note was paid, anything else was going to be  
10 basically profit except for paying the real estate  
11 taxes and paying accounting work or whatever else.

12 MR. COLE: Just to be clear, Mrs. Clinton  
13 did not indicate anything to you to the effect that  
14 the payables due to Mr. McDougal's companies or  
15 companies affiliated with Mr. McDougal were because  
16 of payments that Mr. McDougal had made on behalf of  
17 the Clintons in the past?

18 THE WITNESS: Well, Mrs. Clinton -- it was  
19 my understanding when I looked at those records that  
20 Mrs. Clinton -- the President and Mrs. Clinton had  
21 never seen any reports in connection with  
22 Whitewater. It was my understanding that they had



1 never received any financial statements, they had  
2 never looked attacks returns, they had never seen  
3 books or anything in connection with Whitewater.  
4 That was what I was told.

5 BY MR. JIAMPIETRO:

6 Q You said that's what you were told. By  
7 whom?

8 A By Mrs. Clinton and the President, that  
9 they had never seen anything, they had never seen any  
10 report or received anything in connection with  
11 Whitewater.

12 MR. COLE: Did you ever obtain any  
13 information that would lead you to believe anything  
14 to the contrary?

15 THE WITNESS: Not in the records that we  
16 saw.

17 MR. COLE: That's not what I'm asking you.  
18 In your dealings with the Clintons -- she told you  
19 she had never received any reports or information.  
20 What I'm asking is in your dealings with her, did you  
21 ever have any understanding to the contrary?

22 THE WITNESS: No. I was never told

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1 different.

2 BY MR. JIAMPIETRO:

3 Q Let me ask you two follow-up questions to  
4 your answers that you just gave us.

5 You said that at one point, in talking with  
6 Mrs. Clinton, that she didn't understand the nature  
7 of the liabilities of the corporation.

8 A Yes.

9 Q Was this prior to your analysis of the  
10 documents received from various sources in the summer  
11 of 1990?

12 A I can't remember. I can't remember. But  
13 when we --

14 Q That's fine. The second question would be  
15 you also stated that, after doing your analysis of  
16 those documents, you determined that there were  
17 assets in the corporation and that there was some  
18 positive net worth within the corporation and that  
19 was communicated to Mrs. Clinton.

20 A Yes.

21 Q And you were able to learn that from your  
22 analysis of the additional documents which were

1 delivered to you in the summer of 1990.

2 A Let me qualify that. The only reason we  
3 concluded that there were net assets is because we  
4 made the assumption that those liabilities to those  
5 other companies that related to Mr. McDougal would  
6 not have to be paid.

7 MR. COLE: You disregarded those, in other  
8 words?

9 THE WITNESS: We disregarded those. That  
10 was the reason why. At that point in time, we were  
11 making the assumption that nobody knew why they had  
12 come about, therefore disregard that. These were all  
13 pure assumptions based on very limited amount of  
14 records and very limited time spent in reviewing  
15 these records.

16 BY MR. JIAMPIETRO:

17 Q Let me ask you a couple wrap-up questions  
18 here. They could require very short responses from  
19 you. I just want to have them on the record.

20 When did the Clintons end their formal  
21 relationship with you?

22 A After -- I knew that I was not going to be

1 doing the work -- when I was doing the tax return for  
2 '92, I had the expectation that I was not going to  
3 be doing the work after that, because at that point  
4 in time they were working with attorneys over here to  
5 do the blind trust and to do various other things.  
6 It is very difficult. We were having to Federal  
7 Express things, because we didn't feel like we could  
8 fax communications because this would be very  
9 confidential information concerning their tax returns  
10 or anything like that.

11 We felt like it was just not -- you  
12 couldn't really work long distance using Federal  
13 Express. That's what we did in preparing the '92 tax  
14 return. It came out to be -- it worked out to be  
15 very cumbersome, even though Mr. Foster was in Little  
16 Rock several times and we were able to work out some  
17 things when he was in Little Rock. Even after that,  
18 it was very difficult, because the returns had to be  
19 reviewed many times by so many people.

20 Q Were you reimbursed by the Clintons for  
21 your work on their 1992 return?

22 A No, we did it pro bono.

1 Q You did the 1992 return pro bono?

2 A Yes. That was a decision of the firm.

3 Q How did you come to learn that your  
4 relationship with the Clintons was formally ended?

5 A Well, I expected it. I knew that they were  
6 going to -- when I was preparing the 1992 tax return,  
7 we were already working with some accountants, the  
8 same accountants that are doing the work here in  
9 town. Bob Jones. I was already communicating with  
10 him, and we were already -- they were already  
11 involved in helping make some decisions in the '92  
12 tax return.

13 It was understood that somebody over here  
14 was going to be doing the work and we were just kind  
15 of phasing out.

16 We continued that until after Mr. Foster  
17 died. Really, most of the work was done before his  
18 death. After that the only thing pending was that he  
19 had told me to remind him that income tax projections  
20 needed to be prepared to make sure that we had proper  
21 withholding with all these things.

22 So I wrote a letter reminding, I think it

1 was Carolyn Huber to that effect for whoever was  
2 going to do doing the work. I was told that the  
3 President's return is always selected for audit. So  
4 at that point in time I was told that somebody else,  
5 the accountants over here were going to do the  
6 audit. At first I thought that I may complete the  
7 audit, since I prepared the return. But then they  
8 said no, that the accountants over here would go  
9 ahead and do the audit. That was at the time  
10 Mr. Foster had already died by then.

11 After Mr. Foster's death, the transition  
12 was really made complete. I had very little to do  
13 with anything after that, because he was my contact  
14 point.

15 Q Have you had, in the last four years, any  
16 conversations with Mrs. Clinton or President Clinton  
17 regarding Whitewater?

18 A Not at all, no.

19 Q A couple of other questions regarding  
20 records. Do you currently possess any records of  
21 your work for either Whitewater Development  
22 Corporation or the Clintons?

1 A There are copies of piecemeal things, but  
2 not the whole records.

3 Q You have produced all of the copies that  
4 you have to the Special Committee?

5 A The Independent Counsel got everything,  
6 everything that I had, everything, and then after  
7 that I don't know if they sent you copies or they  
8 sent you the original.

9 Q Did you ever destroy any of the documents  
10 that you received with regard to Whitewater?

11 A Not at all, no.

12 Q I think we have clarified that the  
13 documents that you received with regard to Whitewater  
14 were eventually transferred to the Rose Law Firm?

15 A Yes.

16 MR. JIAMPIETRO: Off the record.

17 (Discussion off the record.)

18 BY MR. JIAMPIETRO:

19 Q I would like to move on to the 1992 Clinton  
20 Presidential campaign. I am going to ask you a  
21 series of questions regarding your contacts with  
22 various people from the campaign.

1 In the records you produced to us, there is  
2 one whole file that is entitled "Clinton campaign  
3 1992." Did you keep records from your notes, from  
4 your conversations and meetings with people during  
5 the campaign?

6 A We tried to. I am not saying that we were  
7 detailed, but we tried to. When they requested  
8 certain things, we wrote it down.

9 Q I'm going to ask you about meetings or  
10 discussions you may have had with a number of  
11 individuals. But I would like to first ask you a  
12 general question which is when did you first learn  
13 that Governor Clinton was going to run for the  
14 Presidency?

15 A I think -- I don't remember learning -- the  
16 very first time I learned that from them was when  
17 they called me and asked me if I could prepare the  
18 disclosure statement, and that was right before it  
19 was due.

20 Q That would have been --

21 A I think it was around October of '91. I  
22 mean, I remember we didn't have very long. They felt



1 like we should do it because we had tax returns and  
2 more information than anybody.

3 Q I would like to get an understanding, to  
4 the best of your ability, of the amount of time you  
5 spent on campaign-related matters relating to  
6 Whitewater and the Clintons. Can you give us a rough  
7 estimate of that?

8 A No, I can't. We billed the campaign for  
9 our time. Our main role was they came to our office  
10 and sometimes they would have questions over the  
11 files. We would let them have the files in our  
12 conference room. They would go in there and look at  
13 files. Different people came.

14 Then they would have questions on the  
15 files. I would sit down with them and answer their  
16 questions, just specific things like they would clip  
17 things in the file. Sometimes they needed copies and  
18 the secretary would make them copies. As far as I  
19 remember, the files didn't go out of the office.

20 Q When was the first conversation that you  
21 had with somebody from the campaign relating to  
22 Whitewater?

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1 A I don't remember when was the first  
2 conversation, but I remember that at some point in  
3 time when somebody -- I remember Web Hubbell calling  
4 me. I remember Bill Kennedy calling me. I  
5 remember -- I can't remember who else calling, asking  
6 me to give them the records that we had on  
7 Whitewater. I told them -- or to answer some  
8 questions from the records or something.

9 I told them that I would not. As far as I  
10 was concerned, that was work done for the Clintons  
11 and I would need a release from either Mrs. Clinton  
12 or the President in order to release that.

13 I can't remember what they were looking  
14 for. I can't remember if they were wanting our  
15 files. I can't remember if we still had some records  
16 left or something. But they were wanting something  
17 that we had in connection with Whitewater.

18 There were at least three or four people,  
19 and I remember Web Hubbell and Bill Kennedy, and  
20 there were a couple more of them called me. And I  
21 told them I would not release anything without a  
22 release from the Clintons. They finally -- both of

1 them were on the campaign trail, Mr. and  
2 Mrs. Clinton. They finally found Mrs. Clinton, and  
3 she called me and told me it was okay to give them  
4 anything they wanted, and I did.

5 Q I would like to show you a document Bates  
6 stamped DKSJ 025449.

7 A Yes.

8 Q Could you please read this document,  
9 starting with the date in the upper right corner?

10 A February 20, 1992, my initials, "telephone  
11 conference Hillary Clinton 1:52 p.m., give  
12 information only to Susan Thomases, New York attorney  
13 Bill Kennedy, Rose Law Firm attorney Loretta Lynch,  
14 working in campaign with attorneys above. Resolved  
15 to liquidate corporation as of 5/31/92, advise her  
16 not to file anything, 966 and attachments --

17 Q What would that be?

18 A The 966, if I remember correctly, is the  
19 form that is attached to the tax return for the  
20 liquidation of a corporation.

21 Q It is a corporate tax document?

22 A It is an IRS form.

1 Q For the corporation?

2 A Yes, an IRS form for the corporation. I  
3 believe that's what it is. "Until last day needed,  
4 30 days before last day of corporation, 966 due  
5 within 30 days of resolution. Returns will need to  
6 be filed for 5/31/90, 5/31/91 and 5/31/92. Hillary  
7 will talk to Bill Kennedy about this and get it in  
8 motion."

9 Q Was this your first discussion with  
10 Mrs. Clinton regarding contacts with people from the  
11 Presidential campaign?

12 A I believe so, yes. I believe so. Really,  
13 I had forgotten about this. I had forgotten about  
14 the tax returns that were going to have to be filed.  
15 I mean, I didn't forget about her calling me.

16 MR. JIAMPINETRO: Off the record.

17 (Discussion off the record.)

18 BY MR. JIAMPINETRO:

19 Q In this note, you make a reference that  
20 returns will need to be filed for 5/31/90, 5/31/91  
21 and 5/31/92. Are those referring to the Whitewater  
22 corporate returns?

1 A Yes.

2 Q You discussed this with Mrs. Clinton?

3 A It looks like it from here. I didn't  
4 remember it.

5 Q You stated previously that you had a  
6 discussion at the very end of the year in 1992 with  
7 regard to the corporate returns and that a decision  
8 was made to file those returns subsequent to that  
9 meeting.

10 A Uh-huh.

11 Q But it would appear from these notes that  
12 early in the year that you had raised the issue that  
13 the corporate returns would have to be filed; is that  
14 correct?

15 A Yes. But remember, at that meeting, I was  
16 the one that told them that -- they were not planning  
17 to file those.

18 Q At the meeting late in the year, in  
19 November?

20 A They were not planning to file those  
21 returns. They were going to leave that to be the  
22 problem for Mr. McDougal that was acquiring the

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1 corporation.

2 Q You note here "Hillary will talk to Bill  
3 Clinton about this and get it in motion."

4 A "To Bill Kennedy."

5 Q To Bill Kennedy about this and get it in  
6 motion.

7 A That means they were going to worry about  
8 it. It looks in here that they had resolved. Based  
9 on my notes, it sounds like they had resolved to  
10 liquidate the corporation as of 5/31/92, but  
11 obviously that never happened.

12 Q The returns were never filed until after  
13 the Presidential election occurred in November of  
14 '92?

15 A The returns were filed in '93. Remember  
16 this, I want to be very clear, when we met at that --  
17 I think it may have been the first week of December,  
18 at that point in time, it was my understanding from  
19 what Mr. Foster said -- I can't remember if Web  
20 Hubbell had already left the meeting or was still  
21 there -- that they had already negotiated to sell the  
22 stock and as part of those negotiations they were not

1 going to file these returns.

2 It was supposed to be the problem of the  
3 person who ended up with the corporation to file  
4 those returns. They were just going to sell the  
5 stock for \$1000 and be out.

6 Q We have a letter, which I will show you,  
7 from Vincent Foster, Jr., to you dated December 23,  
8 1992, which notes that "effective December 22, 1992,  
9 the Clintons transferred their interest in Whitewater  
10 for \$1000 cash." It also states "we will take you up  
11 on your firm's offer to prepare the delinquent  
12 corporate tax returns."

13 Is this the first time you learned of the  
14 transfer of the Clintons' interest in Whitewater?

15 A That the actual transfer had taken place,  
16 yes, but I knew that it was going to take place based  
17 on my previous meeting.

18 Q The transfer didn't take place until, once  
19 again, after the election and it didn't take place  
20 until December 22, 1992.

21 A Uh-huh.

22 Q Here we have you in February, on February

1 20, '92 discussing with Mrs. Clinton that these  
2 returns need to be filed and she said action was  
3 going to be taken and apparently no action was taken  
4 until December to file the returns.

5 A Right.

6 Q I showed you the letter dated February --  
7 the notes that you took from a February 20, 1992  
8 conversation with Mrs. Clinton. Subsequent to that  
9 conversation, telephone conversation, how often would  
10 you discuss Whitewater related issues with people  
11 from the Clinton campaign?

12 A I cannot remember. I remember -- I can  
13 tell you that people called me and I talked or that  
14 came by my office. I remember Susan Thomasson called  
15 me on the phone.

16 Q Why don't we, at this point, maybe at each  
17 step, why don't you give us a brief overview of the  
18 people who you recall and we can go back later and  
19 review them.

20 A I remember after this telephone  
21 conversation with Mrs. Clinton, Susan Thomasson  
22 called me.



1 Q Susan Thomasson or Thomases?

2 A Thomases, I guess. I have Thomasson. Is  
3 it Thomases? She called me and wanted to know about  
4 Whitewater, and then she came down to my office.

5 Q When would this call have occurred?

6 A I think it was shortly after this call, the  
7 February 20th call, because, see, before Mrs. Clinton  
8 called me, all these people were calling wanting  
9 information and I would not give it without a  
10 release.

11 She told me in this telephone call that I  
12 could give information to these people. So after  
13 that, Susan Thomases, she called me and I talked with  
14 her on the phone. Then she came by my office a few  
15 days later with Loretta Lynch.

16 I don't remember any other telephone -- I  
17 don't remember any other conversations that I had  
18 with Mrs. Thomases besides those, just that one time  
19 on the phone and then coming to my office.

20 If I remember correctly, Loretta Lynch came  
21 back to my office maybe two or three times after  
22 that, and they were -- when Susan Thomases was in my

1 office, I met with her and Loretta Lynch, and went  
2 over some of the files and explained some of the  
3 things that had been done, and explained what I knew  
4 about Whitewater, which was not really that much.

5 Q Why don't you kind of walk through us what  
6 was discussed in those meetings and telephone  
7 conversations with Ms. Thomases and Loretta Lynch.

8 A If I remember correctly, some of the issues  
9 that were discussed are some of the things that the  
10 press had questions about at that time and was  
11 basically -- they wanted to -- Susan Thomases and  
12 Loretta Lynch at that point in time wanted a  
13 background of what I knew about Whitewater. I told  
14 them basically what I told you, what I have been  
15 telling you, how we came about to prepare the  
16 returns, what happened, what we found out about  
17 Whitewater.

18 Then the other issue was one thing that I  
19 don't think that we have gotten into is, when we went  
20 through Whitewater's books, it was the first time  
21 that we had seen some of these bank names. Alison  
22 Burton, who prepared all the work papers, she also

1 had been preparing the work papers for the Clintons'  
2 tax returns. So she pointed out to me that some of  
3 those banks that were listed in the Whitewater books  
4 that Whitewater was making payments for were the same  
5 banks that we had claimed some deductions for  
6 interest in the tax returns of the Clintons in prior  
7 years.

8 So she said she wondered where those --  
9 could we have had duplicate deductions. So then we  
10 were trying to establish it by looking at the books,  
11 and we couldn't. We were trying to find in the books  
12 actually like interest deductions, like what we had  
13 in the tax returns. We couldn't find it, because the  
14 books were just not the kind that you could find it  
15 very quickly.

16 MR. COLE: You made the effort to determine  
17 the deductions --

18 THE WITNESS: Yes.

19 MR. COLE: Based on the records you had  
20 from Whitewater, you could not make any  
21 determination?

22 THE WITNESS: No.

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1 MR. COLE: Did you tell the Clintons what  
2 you did?

3 THE WITNESS: Yes.

4 MR. COLE: What did you tell them?

5 THE WITNESS: I talked to Mrs. Clinton and  
6 I told her that when looking at this, we are -- I  
7 told her Alison had brought this to my mind and we  
8 were concerned about this possibility of duplicate  
9 deductions. She said -- well, she remembered that --  
10 she didn't think so, because she knew that she had  
11 been making payments actually from their bank  
12 accounts, some real estate taxes when Whitewater  
13 didn't have it, or for payments of loans. Also we  
14 did see that some of the loans were in their names  
15 and it looked like, when they incorporated, the loans  
16 were never transferred to the corporation.

17 There were a lot of things in connection  
18 with Whitewater that we pointed out to them that were  
19 problems. As an accountant that has been involved in  
20 tax work and corporate work for a long time, there  
21 were a lot of things that were not done in a normal  
22 way like what you would do. If you incorporate, you

1 transfer, do something, at least promissory notes  
2 between the shareholders.

3 None of that was done. So we pointed out  
4 all these problems to them.

5 BY MR. JIAMPIETRO:

6 Q I'm going to ask you a question --

7 MR. COLE: Before we leave these problems  
8 behind, let me ask a question. It seems to relate to  
9 something in your June 1, 1990 letter. The second  
10 page of your letter to Mrs. Clinton, you say "I hope  
11 that you can conclude from the information that I  
12 have outlined above that there are still many  
13 unanswered questions and that it would be too  
14 time-consuming and costly to try to obtain all of the  
15 answers."

16 Are some of the issues that you just  
17 discussed what you outlined?

18 THE WITNESS: Yes. I discussed numerous  
19 issues with her that came to my mind as  
20 possibilities. My understanding at the time was they  
21 were going to undertake to find canceled checks for  
22 the deductions. Later on I told you they gave us a

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1 list of the things. Then at that point in time we  
2 were definitely positive that they had paid for  
3 several things, some things we were not sure whether  
4 or not they had paid for where we could not find in  
5 Whitewater books that Whitewater had paid for them.

6 So she asked me -- then there were these  
7 bank statements, all these bank statements that were  
8 missing. She asked me what should she do. I said  
9 well, if we knew definitely that Whitewater paid for  
10 them, then we would need to file amended returns.  
11 But if we do not know for sure, then I don't think we  
12 should file amended returns because there was still a  
13 possibility that the Clintons may have paid for  
14 them.

15 I advised them at that point in time not to  
16 file amended returns.

17 BY MR. JIAMPIETRO:

18 Q Let me ask you a couple of questions.  
19 First of all, let me ask you -- and I want to be very  
20 clear here to distinguish between the Presidential  
21 campaign period and the period after Mr. Clinton was  
22 elected President. During the Presidential campaign,

1 who was your main contact in the campaign?

2 A I really didn't have a main contact in the  
3 campaign until Betsey Wright came into the picture.  
4 She was -- her staff were my contact, and she told  
5 me -- I had talked to her and she called me and told  
6 me these people can come to my office and look at  
7 records. I needed to give information, answer  
8 questions for various people. At different times  
9 there were several different attorneys, young  
10 attorneys that were working on this.

11 Q In your office?

12 A No, no. In the campaign. All our office  
13 did during the campaign is I spoke to Susan  
14 Thomases. Everything that I'm telling you today that  
15 I knew then at that time, I told her and Loretta  
16 Lynch. She was concerned about all the issues, and I  
17 mentioned about all the possibilities and what we had  
18 found, the possibilities of deductions, whether or  
19 not Whitewater could have paid for some of the things  
20 that we have determined definitely, the canceled  
21 checks we found, the things that were still pending  
22 that we did not know for sure, but bank statements

1 were missing from the Clintons, not one or two but  
2 several. They had several bank accounts, like three  
3 or four.

4 So all these issues I mentioned as  
5 possibilities, but we did not know for sure. I  
6 mentioned the advice that I had given, and my advice  
7 had been do not file amended returns unless you know  
8 for sure that you are claiming a duplicate  
9 deduction.

10 Q On that note, let me show you document  
11 Bates stamped 133-1008.

12 A Yes.

13 Q Please review the document. I'm going to  
14 summarize it. It is dated -- are these notes that  
15 you prepared?

16 A Yes, they are my notes.

17 Q Are they notes from a telephone  
18 conversation?

19 A If I had in there "issues discussed with  
20 Hillary Clinton and Loretta Lynch."

21 Q That's the first one.

22 A They are probably a telephone conversation,



1 because I never saw Mrs. Clinton during the  
2 campaign. Loretta Lynch did come to my office two or  
3 three times.

4 Q The first line of the note states "Clinton  
5 campaign, issues discussed with HC and Loretta  
6 Lynch."

7 A Yes.

8 Q It lists a number of items, and I will just  
9 read them. "1984 and 1985 interest paid to Security  
10 Bank of Paragould." I think I will let you read  
11 these notes since some are difficult for me to read.

12 A "1984 and 1985 interest paid to Security  
13 Bank of Paragould, no checks found from Clintons but  
14 bank statements missing per Carolyn, several from one  
15 or two accounts." That means several bank statements  
16 missing from one or two accounts. "1987, 2561  
17 deducted per return to Security Bank of Paragould,  
18 found canceled bank from Clintons dated 12/30/86  
19 check number 1613 for 1,635.51, 1986 1,636 paid," and  
20 that was back to that one.

21 Q There is an arrow pointing back to the  
22 entry for 1987.

1 A Yes. Page 2, 68,900 invested, loan or  
2 otherwise advanced, 68,900; we found canceled checks  
3 for 52,372.94 plus 2,837.21," I believe. There is  
4 something in there that it looks like it was not  
5 copied right. 55,000 including payoff on Logan note,  
6 purchase of Logan property from bankrupt state, pay  
7 interest in '79, '80 and other years after  
8 incorporation. If guarantor on loans can deduct not  
9 capital contributions" -- I can't read the next --  
10 "Ward says guarantor as of '77," and two question  
11 marks.

12 MR. LOFTON: Is that "delete"?

13 THE WITNESS: I don't think so. Really,  
14 that note, it looks like I had just made a statement  
15 and I was questioning. I didn't really know.

16 BY MR. JIAMPIETRO:

17 Q I want to ask you about the entries on the  
18 top of this note. You noted before that you had  
19 raised some questions, or that some questions had  
20 been raised with you, about whether or not certain  
21 deductions had been double-counted.

22 A Uh-huh.

1 Q Does it appear from your review of this  
2 note that such issues were discussed in this  
3 conversation?

4 A Yes. They were discussed prior to that.

5 Q And it appears that there is, in the 1987  
6 entry, that 2561 was deducted in 1987 and that  
7 included a check from December 30th '86, number 1623  
8 for 1,635.51 that was deducted on the 1987 return but  
9 had been paid in 1986. And then just below that  
10 there is a 1986 entry saying \$1,636 paid in 1986.

11 Does the 1986 entry refer to an amount paid  
12 to banks in 1986 that was deducted on their 1986  
13 return?

14 A I'm not really sure. I would have to  
15 look. I have no idea. I think that, going after the  
16 fact, in some report that was prepared by some  
17 people, it looked like that was the case.

18 MR. COLE: While he is looking for the  
19 document, can I ask you one question about this issue  
20 of whether duplicate deductions were taken. Was  
21 there ever a time when you advised the Clintons that  
22 there was a need to amend their prior years' tax

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1 returns for duplicate deductions that they refused to  
2 do?

3 THE WITNESS: No. My information -- when I  
4 told them, when I advised them back in 1990 that  
5 there was a possibility and we started trying to  
6 determine -- and we really could not determine for  
7 sure, and there was missing information and we could  
8 not find those interest payments in the Whitewater  
9 books -- I at that time told them, my advice was not  
10 to file amended returns because we did not have  
11 definite information.

12 There was a history throughout, based on  
13 what they have had, but they had been making payments  
14 on these loans, and the loans were in their name.

15 MR. COLE: Was it your impression that if  
16 you had advised them that they needed to file amended  
17 returns, they would have done so?

18 THE WITNESS: Oh, yes, I believe they would  
19 have done so.

20 MR. COLE: Thank you.

21 BY MR. JIAMPIETRO:

22 Q I'm going to show you document Bates

1 stamped 133-1011. This is a facsimile cover sheet  
2 addressed to you dated March 23, '92, the same date  
3 as the notes we were just reviewing from Hillary  
4 Clinton, and then it has the governor's mansion logo  
5 on it. It was sent by a Sheila Ferguson.

6 Take a moment to review this document. It  
7 appears to be a copy of a report prepared by Patton,  
8 McCarthy & Associates addressed to Governor Bill  
9 Clinton and Hillary Rodham Clinton which discusses  
10 their investment in Whitewater.

11 A Yes.

12 Q Was the conversation, the notes of which we  
13 were just reviewing, from March 23, '92 related to  
14 the document faxed to you from Mrs. Clinton on March  
15 23rd, '92?

16 A It may very well have been, because I  
17 remember this fax. Before the report was released to  
18 the media, she wanted me to look at the report. She  
19 trusted my opinion based on that I had been their  
20 accountant for many, many years.

21 So she wanted me to read the report and see  
22 if I thought anything in the report should not be

1 there from an accountant's point of view.

2 So she wanted me to read it and see what I  
3 thought. I made some notes to them, to the report.

4 Q Let me just clarify for the record that  
5 there are a number of notes on the report,  
6 handwritten notes, and it appears that there may have  
7 been highlighting on the report. Are these notes on  
8 the report your handwriting?

9 A This right here is my handwriting, right  
10 here (indicating).

11 Q Did you discuss these comments with  
12 Mrs. Clinton?

13 A I discussed them, yes. I'm trying to  
14 recall if I discussed them with her. I believe I  
15 did. I believe that I discussed them with her and  
16 told her why some of these -- I remember there were a  
17 couple of statements in the report that I felt like  
18 didn't understand why they were there and did not  
19 know if I agreed with it, except that I didn't have  
20 the kind of information these people had had.

21 So I pointed those out to her. So she told  
22 me to talk to the accountant who had prepared the

1 report and see if the notes needed to be there or if  
2 they could be changed.

3 So I talked to him and he --

4 Q Why don't we just clarify for the record,  
5 which accountant did you speak to?

6 A Norris Weese.

7 Q He, for the record, is an accountant that  
8 was working with Patton, McCarthy & Associates?

9 A My understanding he is a CPA with Patton,  
10 McCarthy & Associates.

11 Q He was a CPA. He has since passed away.

12 MR. COLE: Does that mean you won't be  
13 deposing him?

14 MR. JIAMPIETRO: That is correct.

15 THE WITNESS: I asked him some questions in  
16 connection with those statements, and I don't  
17 remember what the statements were and what exactly,  
18 what I felt like they should be different. I felt  
19 like in the way they were written, they were  
20 either -- they would raise a lot more questions, or  
21 something that could be said in a different way, or  
22 changed in some way.

1 I remember that basically he said well, he  
2 would consider it. I remember when the report came  
3 out, he didn't change anything. He had it exactly  
4 like it was.

5 BY MR. JIAMPIETRO:

6 Q Let me ask you a question just to refer  
7 back to the notes that you took on March 23rd.

8 A Yes.

9 Q This report was faxed to you also on March  
10 23rd?

11 A Uh-huh.

12 Q Was your conversation with Mrs. Clinton and  
13 Loretta Lynch subsequent to your review of the report  
14 or prior to your review of the report?

15 A I am sure that it was subsequent to,  
16 because when you are looking at these things right  
17 here --

18 Q When you say "these things," you are  
19 referring to the items listed on the notes of the  
20 conversation?

21 A When looking at the items on the note, the  
22 items concerning the interest paid in '84, '85, '86



1 and '87 and potential questions with those, the only  
2 way I would have gotten some additional information  
3 is from this report, the back of this report that  
4 shows the questions and interest paid that the  
5 accountants in Colorado verified.

6 The accountants in Colorado did an in-depth  
7 analysis and looked at all the --

8 Q We will be deposing them in the next couple  
9 days. So we will learn a lot about that report.

10 A I never saw the Clintons' previous years'  
11 tax returns, never listed the deductions or  
12 anything. I never saw their canceled checks for the  
13 interest paid or anything. It is my understanding  
14 they had all of that.

15 Q I want to return to these notes of this  
16 conversation. The report that we reviewed that was  
17 faxed to you mentions the 1984 and '85 interest  
18 payments to Security Bank of Paragould. The 1986 and  
19 '87 issues raised in your conversation are not  
20 mentioned in the report.

21 A They are not?

22 Q They are not.

1 A I would not have known anything.

2 Q That's why I'm wondering whether or not you  
3 discussed this information independently of the  
4 report.

5 A No. As far as I remember, when we were --  
6 after we learned about Whitewater, I remember that  
7 the years that we had concerns with were '84 and '85,  
8 specifically those years. I thought the rest of the  
9 years were all taken care of. I don't remember any  
10 other years after that. So these had to come from  
11 the report because we did no subsequent work  
12 concerning this.

13 MR. COLE: That's what I was going to ask  
14 you. With respect to the '84 and '85 tax years, did  
15 you have any involvement in the Clintons' amendment  
16 of the return for those years?

17 THE WITNESS: Not at all, no. I learned  
18 during the campaign, somebody told me -- I can't  
19 remember if it was Mrs. Clinton or Betsey Wright or  
20 Loretta Lynch -- that the returns were being  
21 amended.

22 Basically it was my understanding that they

1 never made a final determination that these things  
2 were not paid by the Clintons. In order to just stop  
3 the problems and people arguing about these things,  
4 they would amend their returns.

5 That was the position, because even they  
6 asked me, and if you would speak to them, you would  
7 know that my advice again was from a political point  
8 of view. I didn't know what I would do, but from an  
9 accountant's point of view, I would not amend returns  
10 unless I knew for sure there was a duplicate  
11 deduction.

12 BY MR. JIAMPINETRO:

13 Q We are getting the information. I believe  
14 subsequently a number of these deductions were found  
15 to be double-counted and the Clintons made payment on  
16 that. I'm not sure if it is the '84 and '85 or  
17 whether it includes the '86 and '87. We are getting  
18 a document concerning that.

19 A I saw that document in connection with the  
20 report that was done. I believe this particular item  
21 I remember because I saw that document just within  
22 the last two weeks, that this particular item was --

1 they paid it one year, but the bank included it,  
2 posted it the next year.

3 Q You are referring to the '86-87 double  
4 count?

5 A Yes. That's what that document mentions.  
6 I just learned that within the last two weeks.

7 Q What you are saying is that with regard to  
8 the '86 and '87 notes of your conversation on March  
9 23, '92, subsequently it was discovered that in fact  
10 the 1,636 was double-counted in interest deductions?

11 A That's what it seems like from that report  
12 that came out within the last two weeks or so.

13 Q It was brought to your attention on March  
14 23, 1992?

15 A No, I don't think so at all. I really  
16 believe that -- I don't remember exactly why these  
17 notes came about, but obviously it looks like these  
18 notes came about from my analysis of this particular  
19 report right here (indicating) and what was stated in  
20 this report.

21 I think in here I was just summarizing the  
22 things that still may be questions in connection with

1 the report, not because I received any additional  
2 information.

3 Q I understand that. My only question is  
4 that it appears, from reviewing the report, that the  
5 '84 and '85 issues which are listed in your notes  
6 are discussed in the report, but the '86 and '87  
7 issue which is listed in your notes is not listed on  
8 the report.

9 A Are you sure they are not? Because I  
10 wouldn't have had any knowledge of '86 and '87. I  
11 don't remember our office ever doing any more work.

12 Q I believe there may have been a longer  
13 report --

14 MR. COLE: I believe you two are passing  
15 like two ships in the night. You are talking about  
16 the report that Patton, McCarthy & Associates  
17 prepared in connection with the campaign. She is  
18 talking about the report released by the White House  
19 last week.

20 THE WITNESS: No, no.

21 MR. JIAMPIETRO: She is talking about the  
22 Patton, McCarthy report.

1 THE WITNESS: I don't know where I would  
2 have gotten this information except from this report  
3 because we didn't do any more work. We didn't do  
4 anything after 1990, we didn't do any more work going  
5 back to any of this.

6 MR. LOFTON: You are correct. I provided  
7 her recently a copy of the Lynch report that the  
8 White House released last week.

9 MR. COLE: The Lyons report?

10 MR. LOFTON: The Representative Lynch  
11 report.

12 MR. COLE: The Leach report, Congressman  
13 Leach?

14 MR. LOFTON: Yes. I think that is the  
15 source of her information.

16 MR. COLE: It is not clear to me from  
17 looking at the report released from the White House  
18 last week that it is the same item that was referred  
19 to very summarily in her notes there. It may be. I  
20 just can't tell.

21 THE WITNESS: What I am saying is I would  
22 have had no -- I never did any more work or analysis

1 going back. The campaign was doing that.

2 BY MR. JIAMPIETRO:

3 Q I think we can clarify this very quickly.

4 Any of the information which you took down in notes  
5 here would have either been given to you by someone  
6 else, or you would have obtained from your review of  
7 the report?

8 A Right, right, because I didn't do anymore  
9 analysis.

10 Q Why don't we just discuss briefly your  
11 involvement with the preparation of the report by  
12 Patton, McCarthy. Can you give us a brief  
13 description of your involvement in the preparation of  
14 that report.

15 A I had no involvement in the preparation of  
16 that report except for they requested for us to fax  
17 them some of our work papers. And there should be  
18 something in the files showing the work papers that  
19 we faxed to them.

20 After that, when the report was finalized,  
21 they may have called us -- I don't remember if they  
22 called us asking any questions. If they did, it was

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1 something very brief.

2 When the report was finalized and before it  
3 was released to the public, Mrs. Clinton wanted me to  
4 review it and give her some input, and that's it.  
5 Other than that, I have no other connection with the  
6 report.

7 Q Did you ever discuss the report with Jim  
8 Lyons?

9 A I remember talking to Mr. Lyons once or  
10 twice, but I don't remember what it was about.

11 MR. COLE: There is a document -- just to  
12 help refresh your recollection, I can pull it out --  
13 that would indicate you sent copies of the tax  
14 returns you prepared for Whitewater Development  
15 Corporation to Mr. Lyons.

16 THE WITNESS: Okay. That may have been  
17 why. I remember talking to him once or twice, but I  
18 don't remember what about. Like I said, there should  
19 be something in the file.

20 BY MR. JIAMPIETRO:

21 Q Did you ever have any discussions with  
22 Leslie Patton --



1 A I don't remember.

2 Q -- who was an accountant with Patton,  
3 McCarthy? He is the President of Patton, McCarthy.

4 A I don't remember if I did. I remember  
5 during 1993, when I prepared the 1992 tax return, I  
6 called them many times trying to figure out what to  
7 do with Whitewater and trying to get into their work  
8 papers and getting to determine basis for  
9 Whitewater. I may have talked to Mr. Patton at the  
10 time, but if I did, he would have referred me to  
11 Norris Weese. He is the only one that really seemed  
12 to know -- he seem today have done all the work.

13 Q Mr. Weese seemed to have done all the work?

14 A Yes.

15 MR. JIAMPIETRO: Off the record.

16 (Discussion off the record.)

17 BY MR. JIAMPIETRO:

18 Q With regard to Mr. Weese, I have some notes  
19 here which refer to him which I'm going to show to  
20 you. Why don't I pass them over. They are Bates  
21 stamped 133-1018 and 133-109. They appear to be --  
22 why don't you describe them to us using the dates in

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1 the upper right-hand corner.

2 A What year was this one?

3 Q They are both in '92.

4 A Are you sure?

5 MR. JIAMPIETRO: Yes, March '92.

6 (Witness examined the document.)

7 MR. JIAMPIETRO: While you are reviewing  
8 those, I want to point out that we have obtained a  
9 copy of the March 24, 1996 analysis that was sent to  
10 James Leach, the Chairman of the House Banking  
11 Committee, from Mr. Kendall at Williams and Connolly,  
12 the President's personal attorney. It is an  
13 analysis, it is a review of the Clinton tax  
14 adjustments proposed by the House Committee on  
15 Banking and Financial Services, and it is signed by  
16 three independent experts who reviewed the  
17 allegations raised by the House Banking Committee.

18 One of the items addressed in the report  
19 prepared by these independent experts that were  
20 retained by Mr. Kendall is a 1987 interest deduction  
21 for \$2,561. Referring back to the March 23, 1992  
22 notes of Ms. Redden's discussion with Mrs. Clinton

1 and Loretta Lynch, the 1987 item is also the \$2,561  
2 deduction.

3 The analysis by the experts retained by  
4 Mr. Kendall notes "since Mr. and Mrs. Clinton took a  
5 deduction on their 1986 federal income tax return for  
6 the 1,636 of interest that they paid by check on  
7 December 28, 1986, an interest deduction for the same  
8 amount can't be taken in 1987."

9 This appears to reflect the notes listed on  
10 March 23, 1992 conversation, where we have a 1986  
11 entry for 1,636 paid and then the 1987 entry for  
12 2,561 deducted.

13 I just want to point out it appears that  
14 was not in the Patton, McCarthy report of March 23,  
15 1992 that Ms. Redden reviewed.

16 After reviewing those notes that I just  
17 gave to you, I was wondering if you could discuss the  
18 extent of your contacts with Mr. Weese regarding the  
19 Lyons report.

20 A I don't remember very much about it at  
21 all. I have even forgotten about these notes. But  
22 this one on March 17 looks like it is information

1 that he wanted from us from our files. It looks like  
2 in there that he wanted the work papers and  
3 Whitewater's tax returns for the three years and he  
4 wanted the notes receivable, the balances, the  
5 interest expense, liabilities. He wanted the work  
6 papers on the Clintons, the basis of the sale of the  
7 Logan property in 1988. I have in there telephone  
8 conference with Loretta Lynch, she wants us to mail  
9 work papers to Norris Weese.

10 Q Pursuant to this March 1992 conversation,  
11 subsequently you did send your work papers to Norris  
12 Weese?

13 A Yes. We sent him the work papers, and this  
14 one on March 23rd --

15 Q 1992.

16 A -- 1992 seems to be various questions. The  
17 balances on the tax return that we had -- I'm trying  
18 to think. Our balance sheet balances on the tax  
19 returns that we prepared, and the balance sheet  
20 balances on his report right here, if I remember  
21 correctly, they did not reconcile. We were wondering  
22 why, because in trying to advise Mrs. Clinton as to

1 whether or not -- she wanted me to let her know  
2 whether or not I thought just by looking at this  
3 report if it made any sense, if it is incorrect.

4 I remember in talking to Mr. Weese, he  
5 mentioned that -- there were big differences between  
6 the tax return balance sheet balances and his  
7 report. I think he mentioned that the tax returns  
8 were done on a cash basis, and this was just a  
9 statement that he made that the reconstruction was  
10 not based on a tax basis but financial accounting  
11 basis. Therefore, there was not the same purpose.  
12 So it was going to be different. That was just an  
13 answer to that question of mine.

14 The rest of it is the second item was how  
15 much they felt like -- I think that on that letter,  
16 they stated that they thought that the President and  
17 Mrs. Clinton had been out 68,900. Isn't that right?  
18 In this report, the table?

19 Q It is in your notes with Hillary Clinton  
20 and Loretta Lynch.

21 A I was thinking this is where I got it  
22 from. Yes. Well, approximately 68,000.

1 Q I think the important thing to try to learn  
2 from this is just the extent of your conversations  
3 with Mr. Weese. You would have had two conversations  
4 with him or more? We have notes from it appears two  
5 conversations.

6 A I didn't have a lot of conversations with  
7 him at all. The only time I remember, we sent him  
8 the work papers and I remember that after I looked at  
9 this report, what we did, we took this schedule right  
10 here, balance sheet balance --

11 Q The schedule attached to the --

12 A -- to the Patton, McCarthy report, and we  
13 tried to reconcile it to the balance sheet balances  
14 in the tax returns and see if they were in any way  
15 similar.

16 Q Which tax returns?

17 A The tax returns we prepared.

18 Q For Whitewater?

19 A Yes.

20 Q For which years?

21 A For the years '87, beginning right here,  
22 '87, '88, '89.

1 Q Is there an entry for '91?

2 A There looks like --

3 Q '86, '87 and '88 were filed, according to  
4 your previous testimony, in the summer of 1990?

5 A Right.

6 Q But 1989 through '92 were not filed until  
7 the summer of '93.

8 A Right.

9 Q So there would have been no tax returns to  
10 compare them to.

11 A What I'm saying is -- here is the  
12 schedule. We took this schedule --

13 Q Another schedule that is attached to the  
14 report.

15 A One is a reconstruction of the balance  
16 sheet, assets and liabilities. The other schedule is  
17 a reconstruction of income. We strictly took the  
18 schedule of the reconstruction of the assets and  
19 liabilities and usually if a balance sheet is  
20 correct, the rest of the return is correct. So we  
21 were looking for the particular years that we had  
22 prepared the tax returns. We were looking at '87 --

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1 was it '87, '88 and '89?

2 Q '86, '87 and '88.

3 A No. It is '87, '88 and '89.

4 Q Before we go any further and guess at this,  
5 let's find out which documents were filed on which  
6 date.

7 A I remember just from recently looking at  
8 it --

9 MR. COLE: '87, '88 and '89.

10 THE WITNESS: All we were doing is we were  
11 taking these balance sheet balances right here, May  
12 31, '87, '88 and '89 and trying to reconcile those to  
13 the tax return.

14 BY MR. JIAMPIETRO:

15 Q What was the result of that?

16 A It was very different. It was not anywhere  
17 close. Mrs. Clinton wanted me to give her an opinion  
18 on this. There wasn't much I could do to give her an  
19 opinion very quickly without spending much time. One  
20 thing I did, I read the report, the letter.

21 MR. COLE: I hate to interrupt you but so  
22 this will be clear, when you say Mrs. Clinton wanted



1 you to give her an opinion on this, you are not  
2 speaking of a CPA's professional opinion.

3 THE WITNESS: No. All she wanted me to do  
4 is very quickly, I mean, talking about read it and  
5 see what you think and see if this looks -- I had  
6 been her CPA for many, many years.

7 MR. COLE: You went over all of that  
8 before. I understand that. I didn't think you meant  
9 to say opinion.

10 THE WITNESS: Not at all. She wanted me to  
11 look at it and see if it made any sense to us. Of  
12 course I mean she was asking me for something that  
13 was pretty impossible for me because these people  
14 have had all the records, and I had very limited  
15 information and she wanted me just to give her  
16 something quickly.

17 What we did, I read the report letter and  
18 we tried to reconcile this balance sheet to the tax  
19 return balance sheets and they were very different.

20 I was asking Mr. Weese why the  
21 differences. Also, we had come up with --

22 BY MR. JIAMPIETRO:

1 Q Before you move on, you said Mrs. Clinton  
2 asked you for your opinion. Whether or not  
3 professional or informal, what was your opinion that  
4 you gave to her?

5 A I told her what we had done. I told her  
6 that --

7 Q You compared the balance sheets from the  
8 tax returns to the report?

9 A Right. I told her there is no way I could  
10 give her a professional opinion without redoing all  
11 the work these people had done. The only thing I  
12 could do is just read the letter and see if anything  
13 in the letter looked like it could raise any  
14 questions and may not need to be there so that I  
15 could point out to her and also just reconcile the  
16 balance sheet for the years that we had prepared the  
17 tax returns. They were very different. So I talked  
18 to Mr. Weese, and he answered my questions as to why  
19 the differences.

20 In those notes that you gave me, one thing  
21 is that the tax returns had been prepared on a cash  
22 basis. He used financial accounting. So it was a

1 total different approach, total different purpose for  
2 it.

3 The other thing was we had estimated on the  
4 notes based on the information we had had from  
5 Mrs. Clinton or Carolyn Huber, the list of the amount  
6 of investment they had made, and we had come up  
7 with -- made some assumptions, come up with a  
8 conclusion that this is what it looks like. They had  
9 invested and we were pretty close to the amount that  
10 Mr. Weese had come up with, and he was telling me  
11 basically how he arrived. Those notes is just  
12 information he gave me. He would explain to me what  
13 he had done.

14 MR. COLE: By that, Ms. Redden, you mean  
15 that -- you testified earlier that Mrs. Clinton had  
16 believed that she had invested somewhere between 60  
17 and \$80,000 in Whitewater and you had tried with  
18 Ms. Huber's help to confirm that by getting a list of  
19 canceled checks.

20 THE WITNESS: Right.

21 MR. COLE: You are comparing those numbers  
22 to the number provided in the Patton, McCarthy report

1 of approximately \$68,000.

2 THE WITNESS: Right. They were pretty  
3 close. But they have arrived at it totally different  
4 from us.

5 MR. COLE: By coming at the same question  
6 from a different direction, they came out at about  
7 the same place you did?

8 THE WITNESS: Yes, but they used some  
9 information that we didn't have. So it was really  
10 kind of like coincidental that we came to the same  
11 figures.

12 MR. COLE: Did you report that to  
13 Mrs. Clinton that where they came out was about where  
14 you had been in your prior work?

15 THE WITNESS: Yes. I told Mrs. Clinton  
16 what I had learned. She understood when I told her  
17 there is no way I could tell her this was correct  
18 without redoing the whole work. She wanted me to at  
19 least give her what I thought about it. I did some  
20 very limited work just by looking at this, testing  
21 the balance sheets, reading the report and talking to  
22 Mr. Weese as to what else, how he had done it.

1 I explained to her what Mr. Weese had told  
2 me and why the differences and why the conclusions in  
3 his report. All I did is relay that information to  
4 her.

5 MR. COLE: Off the record.

6 (Discussion off the record.)

7 BY MR. JIAMPIETRO:

8 Q Let's move on. I would like to ask you  
9 whether or not, focusing on the Presidential  
10 campaign, you had specific contacts with individuals  
11 and try to get an idea of the extent of your contacts  
12 during the campaign. I will ask you a number of  
13 people; you can give me an idea of whether or not you  
14 had any contacts with them, the extent of those  
15 contacts in terms of one conversation a week or more  
16 and the substance of the contacts.

17 I will go through individually. Focusing  
18 on the Presidential campaign period, because I'm  
19 going to come back to after the election. Vincent  
20 Foster, did you have any contacts with Vincent Foster  
21 during the Presidential campaign?

22 A None. I testified before, I met him

1 December of 1992.

2 Q Webster Hubbell?

3 A I think I may have talked to him one time  
4 where he was trying to get me to release records on  
5 Whitewater before Mrs. Clinton gave her release. I  
6 believe one time.

7 Q He was trying to get you --

8 A They needed the records, they needed the  
9 files on Whitewater.

10 MR. COLE: You testified to this already, I  
11 believe. When you have already testified to  
12 something, tell him it is what you have already  
13 testified to and then we don't have to repeat it.

14 MR. JIAMPIETRO: I believe she mentioned  
15 she had a contact with Mr. Hubbell, but did not go  
16 into the substance of that contact.

17 MR. COLE: She testified that a number of  
18 people contacted her and she then called Mr. Clinton  
19 before she would release the records. I don't see  
20 why we have to go over these same things over and  
21 over again.

22 MR. JIAMPIETRO: She spoke about that in a

1 specific conversation. I am moving as quickly as  
2 possible.

3 THE WITNESS: I never talked to Mr. Hubbell  
4 about anything that I remember except just him  
5 wanting me to release some records, they were trying  
6 to get the records. I told him no until Mrs. Clinton  
7 or the President calls me.

8 BY MR. JIAMPIETRO:

9 Q Betsey Wright?

10 A Yes. How many contacts? I don't  
11 remember. Three, four. Not a whole lot of them.

12 Q By phone?

13 A By phone. I never met with her. She never  
14 came to my office. It was strictly -- I remember she  
15 calling me about the people to give information to  
16 would be coming to my office, and in addition to  
17 that, just the federal disclosure report, the very  
18 last federal disclosure report we filed after the  
19 election.

20 Q We will get back to that.

21 Susan Thomases?

22 A Yes. I already told you, she called me one

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1 time and she came to my office. I believe that's  
2 it.

3 Q Bruce Lindsey?

4 A I don't remember if I ever talked to  
5 Mr. Lindsey. There were two or three attorneys that  
6 I talked to once or twice, and I don't remember the  
7 names and I don't remember that there was anything  
8 much said.

9 Q Bill Kennedy?

10 A That meeting -- strictly during the  
11 campaign?

12 Q Yes, strictly during the campaign.

13 A One call I remember from Mr. Kennedy, the  
14 same day or the day -- the same day I believe that  
15 Mr. Hubbell called, trying to get me to release the  
16 records and I told him no.

17 Q Jim Blair?

18 A If I remember, once or twice, strictly --  
19 not during the campaign. After.

20 Q If it is after the campaign, we will pick  
21 him up down here.

22 A No, not at all.



1 Q I know you have talked about some contacts  
2 with Ms. Lynch, but I just want to get an overview of  
3 all of your contacts with Loretta Lynch during the  
4 Presidential campaign.

5 A She came to my office with Susan Thomases  
6 the first time. After that I believe she came back  
7 to my office to look at records at least twice. I  
8 don't remember if I talked to her or she just looked  
9 at records. She had questions for me. I remember  
10 going over some questions and I remember -- she  
11 also -- I remember some telephone conversations with  
12 her. I think initially she -- it seems like  
13 initially she was there a lot and then calling and  
14 after a while I don't know if she was put in another  
15 department or something or she left. I don't  
16 remember having very much contact with her.

17 Q For the record, and to speed things up, we  
18 have notes from telephone conversations that you had  
19 with Loretta Lynch on February 19, 1992 relating to  
20 Whitewater, March 31, 1992, March 23, 1992 and April  
21 16, 1992.

22 Would that have been the extent of it or

1 would you have had many more conversations?

2 A Are those telephone conferences?

3 Q Yes.

4 A Probably most likely those. I think you  
5 will find in my files pretty good documentation, a  
6 lot better than I could remember on who I talked to.

7 Q I want to broaden my -- did you meet with  
8 anyone else or have conversations with anyone else  
9 from the campaign about matters relating to  
10 Whitewater?

11 A There were some young attorneys --

12 Q You have testified to that?

13 A I can't remember their names. There were  
14 two or three young attorneys. They were different  
15 ones each time. I don't know. They would call me,  
16 and they called me with questions, they would fax  
17 information sometimes, would fax things back. They  
18 came to the office and looked at files.

19 Q Give me an idea of the extent of their  
20 contact with you or presence in your office during  
21 the campaign.

22 A Not very much at all.

1 Q How many times would they have visited the  
2 office?

3 A Boy, I don't know how many times.

4 Q You don't recall?

5 A No, I do not.

6 Q Less than 10, more than 10?

7 A I don't remember. Sometimes they would  
8 have a question on something, on an income tax return  
9 and they would call me to get an explanation. A lot  
10 of them were telephone conversations.

11 Q Did you ever come to meet or speak with a  
12 Jonathan Foster?

13 A Not that I know of.

14 Q Let me show you a document Bates stamped  
15 133-988.

16 A Yes, I know who he is now. He is one of  
17 the young attorneys.

18 Q He is one of the young attorneys?

19 A Yes. Quite a few contacts with him, if I  
20 remember correctly.

21 Q Relating to?

22 A To questions on Whitewater, questions on

1 the Clintons' returns, just all kinds of different  
2 questions. I believe he was involved in giving us  
3 information on that federal disclosure form, the last  
4 one that we filed.

5 Q Do you have any specific recollection of  
6 the issues you discussed with Mr. Foster?

7 MR. COLE: I have to --

8 BY MR. JIAMPIETRO:

9 Q Relating to Whitewater Development  
10 Corporation.

11 A Little to none really.

12 Q Let me show you a document Bates stamped  
13 133-980.

14 (Witness examined the document.)

15 Do you recall reviewing this document?

16 A Yes. We prepared it. It came from our  
17 computers.

18 Q Can you describe it briefly for us.

19 A What it is is on the years that we had  
20 questions that we thought there was a possibility of  
21 duplication of interest deduction because there were  
22 no canceled checks, '84 and '85, we made some

1 computations of the additional tax that would be paid  
2 if the amended return would be filed and the interest  
3 that would be due up to that day. We had computer  
4 software that made those computations and interest  
5 and we just computed that for them and provided it to  
6 the campaign.

7 Q When would this have been prepared?

8 A Isn't there a date around here?

9 Q The only date that I see is in the upper  
10 left-hand corner which states "Clinton interest on  
11 underpayment of tax."

12 A 5/1/92, right here.

13 Q There is on the first page several  
14 handwritten notes on the bottom of the page, please  
15 read though.

16 A "1995 income taxes, security passive  
17 interest expense deducted, 5/1/92, original given to  
18 J Foster." And the same type of note on the other  
19 one except for 1984.

20 Q I didn't understand the last comment you  
21 made "except for 1984."

22 A It is for the 1984 tax year. Remember

1 there were potential -- we had raised up the issue of  
2 potential duplicate interest deductions for '84 and  
3 '85. These were the computations of additional  
4 taxes if amended returns were going to be filed and  
5 the interest due on those taxes if the taxes were  
6 paid.

7 Q Did you ever discuss filing an amended  
8 return with Mr. Foster?

9 A No, I did not.

10 Q Did you ever come to find out that an  
11 amended return had been filed?

12 A Not that an amended return had been filed  
13 but that something had been done to pay for the taxes  
14 or something.

15 Q You prepared this calculation of interest  
16 that would have been interest accrued on those  
17 underpayments in May of '92?

18 A Uh-huh, yes. I want to point out that at  
19 that time it was my understanding that still they had  
20 not made the determination that those interest  
21 deductions were actually duplicated.

22 (Discussion off the record.)

1 BY MR. JIAMPIETRO:

2 Q Did you ever meet with Jim or Susan  
3 McDougal?

4 A I have never met them and never talked to  
5 them.

6 Q Did you ever meet with Gaines Norton or  
7 speak with Gaines Norton?

8 A Yes, I spoke with Gaines. I know Gaines.  
9 I spoke with --

10 Q With regard to -- let me rephrase the  
11 question, please.

12 Did you ever speak or meet with Gaines  
13 Norton regarding any matters relating to Whitewater  
14 Development Corporation?

15 A No, not to Whitewater at all. The only  
16 time that I called Gaines Norton, sometime after  
17 Mr. Kendall became the attorney for the Clintons, he  
18 asked me if I knew Gaines, and I told him yes, I have  
19 known Gaines for several years.

20 He asked me if I could call Gaines to -- I  
21 don't know if he was trying -- I cannot remember  
22 exactly, but I think that he was trying to locate

1 work papers or files that Gaines may have had in  
2 connection with the Clintons, whatever work Gaines  
3 did for the Clintons. So I called Gaines and asked  
4 him if he had any work papers.

5 He by then was no longer with that CPA firm  
6 when he prepared the returns but was working for  
7 another company. I called him and asked if he had  
8 them. He said he did not, and he thought those files  
9 may have been destroyed because it was a long time  
10 ago, and he had been long gone from the company.

11 Q That was Mr. Norton?

12 A Gaines Norton. That's the only time I  
13 called Gaines for anything.

14 Q You just mentioned that you spoke with  
15 Mr. Kendall. Why don't we move now to the period  
16 when Mr. Clinton -- after Mr. Clinton's election as  
17 President.

18 Did you ever come to meet or speak with  
19 anyone from the White House regarding any matters  
20 related to Whitewater?

21 MR. COLE: She testified she talked to  
22 Vince Foster.



1 MR. JIAMPIETRO: We are going to go through  
2 Foster. As we noted earlier, I don't think it will  
3 take that long.

4 THE WITNESS: He was the only person that I  
5 remember discussing Whitewater.

6 BY MR. JIAMPIETRO:

7 Q He was the only person.

8 A Yes. Then I remember, during discussions  
9 with Mr. Kendall and with Vince Foster, I had to call  
10 Carolyn Huber sometimes trying to get documentation.  
11 In fact, she was trying to help get some of the  
12 records for the latest set of Whitewater tax returns  
13 that we prepared.

14 Q Could you please describe any discussions  
15 or meetings with Mr. Kendall. You mentioned you had  
16 one discussion with him.

17 A The first time I met Mr. Kendall, he came  
18 to my office. He was in Arkansas.

19 Q Can you give us -- just so we can move  
20 quickly here -- the time of the meeting.

21 A I do not remember the time. You can get  
22 that from my files, because usually when I met with

1 him, there would be a letter from him or something  
2 like that.

3 Q I will show you a document Bates stamped  
4 133-6508. This is the only letter that we found in  
5 your files relating to a contact with Mr. Kendall.

6 A That's probably when I met with him, right  
7 after I met with him. He came to my office and he  
8 wanted to get information from me as to what we had  
9 in connection with Whitewater and what I knew. I  
10 told him whatever I'm telling you, the same things  
11 I'm telling you.

12 Q Did you discuss anything with him that you  
13 haven't discussed with us regarding Whitewater?

14 A No, not at all.

15 Q Did you have just the one meeting with him?

16 A I have seen Mr. Kendall at least twice, and  
17 I have talked to him on the phone several times. He  
18 called me to ask me questions.

19 Q Regarding Whitewater?

20 A Regarding Whitewater or regarding the  
21 Clintons' deductions in their tax return. Really, it  
22 is all related back to Whitewater.

1 Q And nothing was discussed in those  
2 conversations that we haven't touched on already in  
3 this deposition?

4 A Not at all. He provided information to me  
5 at times on any reports that there may be, that  
6 somebody may have prepared in connection with taking  
7 issue to things that we did on the tax returns and  
8 what I thought about it.

9 I think the first one, I looked at it and  
10 tried to answer him. The next one I told him I was  
11 not going to guess. What we did we did based on the  
12 information we had at the time.

13 There have been numerous in-depth  
14 investigations since then, and I was not going to  
15 worry. Whatever was done was done.

16 Q You mentioned that your meetings with  
17 Mr. Kendall -- your meetings with Mr. Kendall, did  
18 they occur after Mr. Clinton was elected President?

19 A Yes.

20 Q You mentioned that you spoke with Jim Blair  
21 regarding Whitewater after Mr. Clinton was elected  
22 President.

1 A Yes. The only thing, Mr. Blair called  
2 trying to find out about the tax returns we were  
3 preparing for Whitewater, the '90, '91 and '92  
4 returns, and wanted to know about the status of them  
5 and said they were supposed to be mailed to him. I  
6 told him that I would check with Vince Foster, and we  
7 mailed them to him. I think that was it.

8 Q Why don't we discuss your contacts with  
9 Vince Foster after Mr. Clinton was elected  
10 President.

11 A There were numerous contacts with  
12 Mr. Foster. The first one was when I met him. There  
13 was all kinds of speculation that Mr. Foster was  
14 preparing -- getting the Whitewater returns being  
15 prepared. He was not involved in any of it. I was  
16 the one that recommended that those returns be  
17 prepared.

18 Q When you say "the Whitewater returns,"  
19 which ones are you referring to?

20 A The latest set.

21 Q The subsequent three that were filed in  
22 1993?

1       A    I did not meet Mr. Foster until late  
2 November or early December of '92. I was the one  
3 that recommended that those returns be prepared and  
4 filed because --

5       MR. COLE: This is what you already  
6 testified to with respect to that meeting?

7       THE WITNESS: Yes. After that, we were  
8 supposed to prepare the returns but it seemed like  
9 there had been some miscommunication. We were  
10 waiting for the records and we never got them. Later  
11 on Mr. Foster said -- it was months and months, and  
12 of course, it was filing season after that and we  
13 were not concerned about doing all this work pro bono  
14 during filing season. Sometime after filing season,  
15 I contacted him and we still don't have the returns.

16       During the time that I prepared the  
17 projections, the '92 tax returns, I talked to him  
18 several times. He asked me different questions on  
19 the projections, on the tax returns. And when we  
20 prepared the '92 tax return, as I told you, we knew  
21 it was transition, we knew another firm would be  
22 preparing them from then on and that firm was already

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1 involved reviewing those firms.

2       Mr. Foster was meeting with them and  
3 talking to me and trying to get opinions from two  
4 different firms as to how to handle various things.  
5 We had lots of calls and conversations on that.

6       Q    You had numerous calls and conversations,  
7 you have testified to that. Could you give us an  
8 idea of the magnitude of those calls and  
9 conversations and meetings.

10       A    Short calls.

11       Q    Other than the one meeting which you have  
12 already testified to, were there any other meetings?

13       A    I took the projections to his home, because  
14 I think I finished them like on a Saturday and I  
15 delivered them to his home. I don't remember if I  
16 saw him. I don't think I did. I took something else  
17 to his home at another time. It was in connection  
18 with a draft of tax returns or something.

19       Most of my meetings with Mr. Foster, I  
20 talked to him a lot on the phone during the time of  
21 the preparation of the '92 tax return, many, many  
22 times, and I was calling Norris Weese in Colorado,

1 trying to establish -- he knew a whole lot more about  
2 Whitewater than I did. I was trying to get as much  
3 information as possible. I believe Mr. Foster was  
4 calling too. Lots of communications, strictly on the  
5 tax returns.

6 MR. COLE: Just to focus a bit here, was  
7 the main issue that you were talking with Mr. Foster  
8 and Mr. Weese about the tax basis of the Clintons in  
9 Whitewater and what to do about the \$1000?

10 THE WITNESS: Yes.

11 MR. COLE: Did you have any discussions  
12 relating to any other subjects relating to Whitewater  
13 with them?

14 THE WITNESS: No. A lot of people say  
15 Mr. Foster knew all this information. I think his  
16 involvement with anything in connection with  
17 Whitewater was very limited, in my opinion. I think  
18 that he was strictly concerned about how to -- what  
19 to do.

20 BY MR. JIAMPIETRO:

21 Q I'm going to show you some notes that were  
22 taken by Mr. Foster relating to Whitewater

1 Development Corporation to get a better understanding  
2 of the substance. We can read the notes. I will  
3 read the notes to you. You can let me know whether  
4 or not you discussed these issues with him.

5 A Uh-huh.

6 Q I show you a document Bates stamped DKS  
7 000514. This is a page of handwritten notes from  
8 Vince Foster. There are a number of items listed on  
9 the top of the page. I will run through those  
10 quickly and ask you if you discussed any of these  
11 issues with him.

12 The first note reads "what was nature of  
13 deductions, how deduct interest/principal payments  
14 for Corp. " Did you discuss that with Mr. Foster?

15 A I don't even know what he means.

16 Q We can move on to the other ones.

17 A Looking at these things, I can tell you  
18 that --

19 Q Looking at the page --

20 A Looking at the page in general, it looks  
21 like he discussed a lot of things. I remember we  
22 discussed everything connected with Whitewater and



1 whether there were duplicate deductions. My concern  
2 on that basis, on whether or not we actually had  
3 canceled checks --

4 MR. COLE: Which you already testified to,  
5 including this precise note entry.

6 THE WITNESS: This is all -- we discussed  
7 anything in connection with Whitewater as to how to  
8 arrive at basis, what was deducted, were canceled  
9 checks available. I did not know if they were.  
10 During the time in preparing the '92 tax return, we  
11 obtained even more information that is in the file in  
12 the '92 tax file from Mr. Weese as to what he used.

13 Then I called Mr. Weese and talked to him a  
14 lot more times this time than before. I asked him  
15 how he -- had he actually looked at canceled checks  
16 and everything. We went over all his notes on that.  
17 I was trying to establish positively did we have  
18 canceled checks in our hands for everything that was  
19 supposed to be part of basis.

20 At the end my conclusion was, because at  
21 first I was thinking we had a loss of 10- to \$15,000,  
22 then my conclusion attend was I still don't think

1 that anybody has seen everything in connection with  
2 that basis, I think we need to claim no gain or  
3 loss.

4 BY MR. JIAMPIETRO:

5 Q The note on this page reads "JR resists any  
6 gain since inconsistent with saying we had a loss --  
7 zero is arbitrary." As you subsequently learned,  
8 however, a gain was shown on the return?

9 A No, I didn't learn it. I put it in the  
10 return. I prepared the return. I signed it.

11 Q Did you change your mind that a gain  
12 shouldn't have been shown?

13 A No, I did not change my mind. As I told  
14 you, when I prepared that return, Mr. Foster was  
15 getting advice from me and from this other CPA firm  
16 that eventually started doing the work. We went over  
17 various things, footnotes attached to the return.

18 There was a footnote that this firm wanted  
19 attached to the return. I said no. At the end we  
20 compromised what we were going to put in the return  
21 in connection with Whitewater.

22 Q There is one more set of notes that I

1 want --

2 A I resisted any gain because I don't see how  
3 you can have a gain if you invested all this money  
4 and you still didn't get any money back.

5 Q I will show you document Bates stamped DKS  
6 00517 through 519. These are handwritten notes from  
7 Vince Foster. Point 9 states "Whitewater, discussed  
8 with Yoly." It says "Colorado analysis was of  
9 economic loss, did not take into account interest  
10 deductions, calculation included some items for which  
11 there are no canceled checks."

12 Did you ever discuss the Lyons report with  
13 Mr. Foster?

14 A Yes.

15 Q You discussed the substance of that report?

16 A Yes, because I was talking to Mr. Weese and  
17 getting lots more information from Mr. Weese and was  
18 giving feedback to Mr. Foster on what information I  
19 was getting, all in trying to determine whether to  
20 report a loss or zero.

21 Q Why don't you look at the next two pages of  
22 these notes and let us know whether or not these are

1 all related to your basis discussions with  
2 Mr. Foster.

3 (Witness examined the document.)

4 A Boy, I don't remember.

5 MR. COLE: That's a question that can be  
6 answered yes or no, if you know.

7 THE WITNESS: I don't remember. There are  
8 a bunch of figures, 5800, 4800.

9 MR. LOFTON: "I don't know" is a good  
10 answer.

11 BY MR. JIAMPIETRO:

12 Q If you don't know, that's fine.

13 A I don't know if it has anything to do with  
14 basis or not.

15 Q Let's go through a couple of these points  
16 then.

17 A The gist of what we were doing --

18 Q I certainly understand the gist. We have  
19 gone into that in detail. I'm trying to understand  
20 some of these notes.

21 A Okay.

22 Q One of the notes on page 518 states "more

1 importantly would result in an audit of proof of  
2 basis, can of worms you shouldn't open."

3 A Where am I?

4 Q Point B.

5 (Witness examined the document.)

6 Did you ever discuss this with Mr. Foster?

7 A Yes, yes. At some point in time they were  
8 wanting to -- there was a big discussion, an argument  
9 as to what to reflect in the return, how to show the  
10 loss or the gain or zero. They wanted to actually  
11 put down the basis and then put the amount against it  
12 and so forth. I told them not to do that.

13 My previous experience with the IRS, if you  
14 put down basis, you are going to have to be able to  
15 substantiate that basis with documents. So I told  
16 them it could result in an audit, in having to prove  
17 basis, so don't do it.

18 MR. COLE: Did you tell Mr. Foster that an  
19 audit of basis would be a can of worms that you  
20 shouldn't open?

21 THE WITNESS: Yes.

22 MR. COLE: Those are your words?

1 THE WITNESS: The can of worms, I was asked  
2 that at the Independent Counsel's office. I don't  
3 know that basis was the can of worms. I don't  
4 remember exactly. The can of worms was something  
5 that I have used that terminology before.

6 To me, Whitewater, even now, the amended  
7 returns are still or whatever was base is still based  
8 on speculation. I don't think there is anything  
9 definite. In the years interest deductions were  
10 supposed to have been duplicated, some of them were  
11 and some were not.

12 BY MR. JIAMPIETRO:

13 Q Why don't we move on. I want to show you a  
14 document Bates stamped LP 00647 through 649. This is  
15 a letter from Leslie Patton to Jim Lyons, regarding  
16 various issues raised by financial disclosure forms  
17 prepared by the Clintons and on behalf of the  
18 Clintons.

19 Could you please briefly describe for us  
20 your role in preparing financial disclosure forms for  
21 the Clintons, both prior to the Presidential election  
22 and after the Presidential election.

1       A    Yes. Prior to the Presidential election,  
2   sometime around October '91 or so, we were contacted  
3   to prepare the federal disclosure report. We  
4   prepared the very first one we have ever prepared. I  
5   think we had to prepare it within two weeks or  
6   something. We prepared it.

7       After that we were told by -- we never  
8   prepared the state disclosure report and have never  
9   prepared it to date. The state disclosure reports  
10  were prepared by somebody else. I believe they  
11  were -- I don't really know who prepared them. We  
12  prepared strictly the federal disclosure report.

13       After that, during the campaign, we asked  
14  are we supposed to prepare the disclosure report  
15  because we knew the deadline from preparing the first  
16  one. We were told no, the campaign would prepare  
17  it. About three days before the deadline of that  
18  report, we were called, three or two days. The  
19  report was due like on a Monday. Either Thursday or  
20  Friday we were called and asked would we prepare it.  
21  We were told we were not going to prepare it. This  
22  is last minute. They were desperate and we prepared

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1   it.

2       So now, I think they made some changes or  
3   something for some information the campaign may have  
4   had that we didn't have, but that second -- both  
5   reports were prepared very hurriedly. I had  
6   something to do with the federal reports, never with  
7   the state.

8       Q    With regard to the federal financial  
9   disclosure reports that were filed and prepared by  
10  you on behalf of the Clintons, did you list their  
11  interest in Whitewater on those reports initially?

12       A    If I remember correctly, on the first  
13  report, wasn't that left out because it was less than  
14  a thousand dollars or something, the value of it? I  
15  can't remember. You would have to show me the  
16  report.

17       When I prepared those reports, we  
18  consulted, there was a law firm out of Washington,  
19  D.C. or New York that assisted us in trying to  
20  interpret the instructions and everything for those  
21  reports.

22       MR. COLE: So your recollection is that the



1 Whitewater -- you prepared the report; is that  
2 correct?

3 THE WITNESS: Yes.

4 MR. COLE: Is it your recollection that you  
5 did not include the Whitewater investment because you  
6 felt that it was worth less than \$1000?

7 THE WITNESS: It is not what I felt. If it  
8 was not -- was it not included in the federal  
9 report?

10 MR. COLE: That's my understanding.

11 THE WITNESS: In the initial report?

12 MR. COLE: Yes.

13 THE WITNESS: If it was not included in the  
14 initial report, it is because I think at that time,  
15 and I still am strictly going by recollection, we  
16 were assisted in preparing that report by some  
17 attorneys, a law firm that supposedly specializes in  
18 this, I believe out of New York, Washington, D.C. or  
19 New York.

20 We were told, it was our understanding that  
21 the Whitewater investment was worthless, they were  
22 not going to get anything out of it at that point in

1 time.

2 MR. COLE: Let's slow down because this is  
3 important and someone else may not be confused but I  
4 am.

5 You said you were assisted by a law firm.  
6 Did the law firm tell you that Whitewater was  
7 worthless?

8 THE WITNESS: No.

9 MR. COLE: That's the way it sounded, what  
10 you just said -- slow down -- as to what you believed  
11 and what you were told by the law firm and why you  
12 did what you did.

13 THE WITNESS: The law firm was assisting us  
14 strictly with the instructions and what to report,  
15 what not to report, strictly instructions.

16 MR. COLE: Tell us what you decided about  
17 Whitewater.

18 THE WITNESS: I didn't even recollect it  
19 was left out. If it was left out, it was because it  
20 was worthless.

21 MR. COLE: Who decided it was worthless at  
22 that point in time?

1 THE WITNESS: We may have decided that.

2 MR. COLE: "We" being your firm?

3 THE WITNESS: My firm in connection with  
4 the conversations with whoever was involved giving us  
5 information. It is strictly because at that point in  
6 time it did not look like the Clintons were going to  
7 get any money out of Whitewater. The returns that  
8 had been prepared by us, the Clintons had to pay  
9 for.

10 MR. COLE: You mentioned a minute ago  
11 something about a thousand dollars. Was that an  
12 exemption on the form or an exclusion for investments  
13 that were worth less than \$1000?

14 THE WITNESS: I don't remember exactly, but  
15 I believe so. This is the very first -- those have  
16 been the only two federal disclosure reports that I  
17 have ever prepared. But I believe there is something  
18 in the instructions.

19 BY MR. JIAMPIETRO:

20 Q Let me show you a document Bates stamped  
21 523 through 543, which is a letter from Bruce Lindsey  
22 to the associate general counsel of the Federal

1 Election Commission. The amended report that  
2 Governor and Mrs. Clinton -- the amendment reports --  
3 let me read the full letter.

4 "Enclosed for filing is an amendment to  
5 schedule C of SF 278, previously submitted by  
6 Presidential candidate William J. Clinton. The  
7 amendment reports that Governor and Mrs. Clinton are  
8 personal guarantors to Whitewater Development, Inc.,  
9 a real estate corporation of which they are  
10 shareholders."

11 It then includes the amended form, and on  
12 the last page, page 543, it lists in liabilities --  
13 the letter, including the amendment is dated April 6,  
14 1992. The loan, the maturity date on the loan listed  
15 on the schedule is October 3rd, apparently 1992.

16 A What is your question?

17 Q I'm wondering if that refreshes your memory  
18 as to this issue.

19 A The one thing in the federal disclosure  
20 reports, we were assisted by people in the  
21 campaign --

22 Q You testified to that.

1 A I believe that there is something -- we  
2 have a copy of the instructions. I believe there is  
3 something in there that if something is less than a  
4 certain amount, you don't have to disclose it.

5 If I remember correctly also --

6 Q Let me ask you one question. I think it  
7 will clarify this whole issue and you will answer all  
8 of my questions because it will take a long time for  
9 us to get involved in the details.

10 Did you have any discussions prior to  
11 filing the first disclosure form about whether or not  
12 Whitewater should be included?

13 A I'm sure we did. I am sure we did.

14 Q Do you have a specific recollection of  
15 having those discussions?

16 A I can't remember exactly, but I am fairly  
17 positive that we did because we were aware of  
18 Whitewater and we considered everything, all the  
19 information that we had.

20 There is one thing that I was going to  
21 mention. If I remember correctly, and I am again  
22 going from memory and I could be wrong, when we

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1 finished looking at Whitewater after the tax returns  
2 and that analysis, it was our conclusion at that time  
3 that the only shareholder was Mrs. Clinton; the only  
4 shares of stock that we found were in Mrs. Clinton's  
5 name.

6 If I remember correctly, on the S election,  
7 she was the only shareholder listed. In fact, I  
8 don't think Mr. McDougal was listed as a shareholder  
9 and I don't think the President was listed as a  
10 shareholder.

11 So it is possible that at the time, I  
12 believe there is something in the report, there are  
13 certain things owned by a spouse that don't have to  
14 be listed.

15 I am sure that Whitewater was considered,  
16 and I am sure if it was left out, it is because of  
17 discussions with other people that were assisting us  
18 in preparing the report, it was determined that it  
19 didn't meet the criteria and it didn't have to be  
20 included.

21 MR. COLE: Sitting here today, do you have  
22 a recollection that, before the first form was filed,

1 you discussed the Whitewater investment and whether  
2 or not it should be reported with anyone outside of  
3 your firm? I'm not asking whether you think it  
4 happened or probably happened. I'm asking you  
5 sitting here today whether you remember discussions.

6 THE WITNESS: I cannot tell you  
7 specifically. But I can almost be positive that it  
8 was because we would not have overlooked something  
9 like that that we had knowledge of. All assets and  
10 liabilities that we had knowledge of were discussed  
11 and considered.

12 MR. COLE: After the first form was filed,  
13 between the time the first form was filed and the  
14 amendment that Mr. Jiampietro showed you, do you have  
15 a recollection of discussing the preparation of the  
16 amendment or the filling of the amendment?

17 THE WITNESS: No. We were told that an  
18 amendment -- we were told that our report had gone to  
19 somebody that had reviewed it and those were the  
20 changes that were made. I talked to several  
21 attorneys that were supposed to review those  
22 reports.

1 MR. COLE: You talked with them before or  
2 after the filing?

3 THE WITNESS: I believe before and after I  
4 talked to them. I would have to go back and -- is  
5 there something in the file? There is a file in the  
6 disclosure report.

7 MR. JIAMPIETRO: We pulled some documents  
8 from that file.

9 THE WITNESS: There should be --

10 MR. COLE: Maybe while I go back over some  
11 other areas, you can look in the file to see whether  
12 there is anything that would document discussions.

13 THE WITNESS: There is a file on both  
14 disclosure reports. I am sure it was considered.

15 MR. JIAMPIETRO: Off the record.

16 (Discussion off the record.)

17 MR. JIAMPIETRO: If this is an issue we  
18 want to follow up with you, we might have to do it by  
19 telephone.

20 THE WITNESS: That would be fine.

21 There is no way we would have left out  
22 Whitewater from that report. This is the very first



1 time we were preparing a federal disclosure report  
2 and we were getting assistance from everybody we  
3 could get. We were very much aware of Whitewater.  
4 We would not have left it out.

5 MR. JIAMPIETRO: I have no further  
6 questions.

7 EXAMINATION

8 BY MR. COLE:

9 Q Mrs. Redden, what I would like to do in the  
10 limited time we have left to try to make sure you  
11 catch your plane is go back with some follow-up  
12 questions on the areas already covered. I will try  
13 to focus my questions on points that you haven't  
14 already covered, and if you could focus your answers,  
15 you don't need to repeat for me now things you have  
16 already testified to earlier, although to put things  
17 in context we will have to go over a little bit of  
18 the same ground.

19 If I understand your prior testimony  
20 correctly, your first substantial involvement or real  
21 involvement in Whitewater was after Mrs. Clinton  
22 received the letter from the Internal Revenue Service

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1 indicating that the corporate returns for '87, '88  
2 and '89 were delinquent; is that correct?

3 A Yes. I believe it was only for one of  
4 those years.

5 Q You have testified, so we are clear on the  
6 record, that you had some prior involvement and we  
7 saw a letter concerning the sale of lot 13 in the  
8 Whitewater Development. But at that point you didn't  
9 become involved in any substantial way in  
10 Whitewater?

11 A No, we didn't really know much about  
12 Whitewater.

13 Q I would like to focus on the point in time  
14 Mrs. Clinton received the letter from the IRS. Am I  
15 correct in understanding she provided the letter to  
16 you and asked you to prepare a response and you  
17 prepared a response?

18 A Yes.

19 Q At that time you didn't file the returns,  
20 as we know, you prepared the returns and filed them  
21 later but you sent the IRS a letter?

22 A Right.

1 Q In the discussions that you -- next  
2 question.

3 Did Mrs. Clinton then ask you to take the  
4 next step and prepare the returns for filing?

5 A Yes.

6 Q In the discussion that you had with  
7 Mrs. Clinton at that time, what did she tell you  
8 about who had been handling the affairs of the  
9 corporation?

10 A At that time she said that they had -- she  
11 told me about Whitewater in detail as far as the  
12 involvement in it.

13 Q What did she tell you, in summary terms?

14 A Basically that they had invested. In '88 I  
15 didn't know much about Whitewater. At this point in  
16 time she talked about, she went in depth as to they  
17 had invested in the purchase with Mr. McDougal and  
18 his wife, and they were supposed to just be passive  
19 investors, they were just supposed to put in the  
20 money. And Mr. McDougal was supposed to take care of  
21 everything in connection with the investment.

22 And based on the projections at the time it

1 was supposed to make some money but it never did.  
2 And they never received any money from the  
3 investment, and they never received any reports in  
4 connection with the investment.

5 Q And you also testified earlier that she was  
6 concerned because she didn't have a great deal of  
7 information about the corporation at that time?

8 A She didn't know anything about the  
9 corporation as far as I know.

10 Q Now, focusing specifically on what you can  
11 remember about what she told you at that time, did  
12 she say anything to you about bank loans relating to  
13 Whitewater being outstanding?

14 A I don't remember. She mentioned something  
15 about money that had been borrowed. They had  
16 borrowed some money themselves and they had borrowed  
17 some other money with the McDougals. I don't know  
18 that she knew that any loans were outstanding. I  
19 don't remember.

20 Q Do you remember whether she told you that  
21 the loans that were outstanding were personal loans  
22 of the Clintons and the McDougals, or corporate loans

1 of Whitewater Development Corporation?

2 A She knew that -- when I say I don't  
3 remember, I'm going from recollection. I am not  
4 sure. But I believe that she knew that there were  
5 some loans that they were paying on because they  
6 had -- sometimes the payments would not get made and  
7 somebody would call them and ask them to send money  
8 and they would send money.

9 Q Was it your understanding that Mrs. Clinton  
10 viewed those loans as obligations of the corporation  
11 or obligations of the Clintons personally?

12 MR. JIAMPIETRO: I think it is important  
13 that you have a specific recollection.

14 MR. COLE: Joe, I didn't interrupt you  
15 about coaching the witness when you were asking your  
16 questions, so why don't you let her answer and then  
17 her testimony will speak for itself as to whether it  
18 is specific or general. In the limited amount of  
19 time you have left me here after you have taken five  
20 hours and leaving me about 15 minutes, I would like  
21 answers to my questions without interruptions.

22 THE WITNESS: As far as I know,

1 Mrs. Clinton knew very little about Whitewater except  
2 that they had put up some money, they had been making  
3 payments on loans, and they made payments for real  
4 estate taxes, made payments for other things where  
5 somebody, the Wades, had contacted them to make  
6 payments for, especially after Mr. McDougal could not  
7 be found.

8 She had been making those payments and she  
9 didn't really know anything about what was going on  
10 or what had happened, what was the status of  
11 anything.

12 BY MR. COLE:

13 Q You testified at great length several times  
14 earlier in the day about Mrs. Clinton's interest in  
15 determining whether there were Whitewater assets that  
16 perhaps would be a source for the Clintons to recover  
17 some of their investment in Whitewater. I understand  
18 that. You have testified to that.

19 I am interested in, from an accountant's  
20 perspective, the other side of the coin, and that is  
21 Whitewater liabilities and what Mrs. Clinton knew or  
22 expressed to you about liabilities associated with

1 Whitewater that the Clintons might be responsible  
2 for.

3 A As far as I know, the only thing that she  
4 knew about was -- and really when I'm going on these  
5 things, I don't know if she relayed this information  
6 to me before we looked at the records or after we  
7 looked at the records and I told her this is what is  
8 here. I don't remember.

9 Q If I could interrupt you for a moment. I  
10 know this is very difficult, it has been a long  
11 time. I would like to separate what you remember  
12 about your discussions with Mrs. Clinton before you  
13 obtained the records and list of payables that we  
14 have had testimony about. What I'm focusing on is  
15 what Mrs. Clinton knew before you received the  
16 documents and reviewed them with her.

17 A I don't remember specific details at all.  
18 The only thing that I remember is the general  
19 details, which is she knew little to nothing about  
20 that corporation or Whitewater. The only thing that  
21 I knew for sure that she knew was that they had  
22 invested in it, they had spent a lot of money, there

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1 were some loans that they had been involved in, and I  
2 don't even think that she knew at that point in time  
3 even the balance of those loans. That's all I  
4 remember. As far as the specifics, that is too far  
5 back.

6 Q You have been very helpful. Your  
7 recollection is that she did not know at that time  
8 the amount of the loans that were outstanding, number  
9 one, the amount of the loans outstanding; and number  
10 two, if I understood your prior testimony correctly,  
11 you also indicated that she did not know the amount  
12 of the payments that the Clintons had made related to  
13 Whitewater; is that correct?

14 A Yes.

15 Q Did she ever have any discussions with you  
16 about the tax deductions that the Clintons had taken  
17 relating to Whitewater in prior years?

18 A No, not at that point in time.

19 Q I'm focusing now on the point in time at  
20 which you first became involved in Whitewater.

21 The first tax return that you prepared for  
22 the Clintons was the 1984 return?



1 A Yes.

2 Q And during the years that you prepared tax  
3 returns, at the time you were preparing the returns,  
4 were you aware of any tax deductions that were taken  
5 relating to Whitewater Development Corporation?

6 A No. I was not aware that Whitewater  
7 existed.

8 Q So any interest deductions that the  
9 Clintons may have provided to you during those tax  
10 years and that you may have included on their  
11 returns, which unfortunately we don't have time to go  
12 through the returns item by item, but you were not  
13 aware at that time that those were Whitewater related  
14 tax deductions?

15 A Not at all.

16 Q Did you have any discussion with  
17 Mrs. Clinton, or Mr. Clinton for that matter, about  
18 tax deductions that the Clintons may have taken in  
19 prior years before you came to be their tax preparer?

20 A No.

21 Q Now, when the Whitewater tax returns were  
22 prepared, you testified that Mrs. Clinton had

1 reservations about signing the returns and that  
2 eventually Susan McDougal signed the returns.

3 A Yes.

4 Q We covered that. Do you remember -- you  
5 said you had no discussions with Mrs. McDougal at all  
6 at any time?

7 A I never met her or spoke to her.

8 Q Did you come to learn from Mrs. Clinton or  
9 otherwise what discussions she may have had with  
10 Mrs. McDougal about the tax returns at that time?

11 A Not really. I don't remember, except that  
12 she was trying to find Mrs. McDougal and get her to  
13 sign the returns.

14 Q And after the returns were signed, did you  
15 file them?

16 A No. I mailed the returns to Mrs. Clinton  
17 and then they got signed and filed after that. I  
18 didn't see the returns.

19 Q You didn't perform the filing for them?

20 A No. I hardly ever do filing.

21 Q Do you know if there was any understanding  
22 reached between the Clintons and McDougal as to who

1 would prepare subsequent year Whitewater corporation  
2 tax returns?

3 A At what point in time?

4 Q At the point in time you completed the  
5 1987, '88 and '89 returns.

6 A No, I don't know that there was any  
7 understanding.

8 Q What was your understanding -- I'm trying  
9 to go quickly here and just repeat some of the things  
10 you have already testified to.

11 Your understanding was that, prior to the  
12 returns that you prepared, Mr. McDougal had been  
13 responsible for preparing the returns?

14 A Yes, that's my understanding. That's based  
15 on the signature on some of the returns.

16 Q And I believe that you also testified that  
17 that's based on what Mrs. Clinton told you when she  
18 asked you to do this?

19 A Yes.

20 Q And how did you learn that Mrs. McDougal  
21 had signed the returns if you didn't file them?

22 A I think -- I can't remember if we were

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1 given copies for the files. If we were given copies  
2 for the file, they will be in the file, like the  
3 first page. At some point in time -- see, after  
4 those returns were filed, remember we did some  
5 additional work in trying to establish, answer some  
6 questions for Mrs. Clinton. So I was talking to her  
7 about Whitewater for a period of time. I'm sure that  
8 she told me at that time that Mrs. McDougal had  
9 signed them.

10 Q But you are not aware of whether there was  
11 any agreement or understanding between the Clintons  
12 and the McDougals about who would prepare the  
13 subsequent years' returns?

14 A No. I don't think there would have been at  
15 that point in time because I don't think Mr. McDougal  
16 was still found, and Mrs. McDougal, I don't think she  
17 would have had anything to do with preparing the  
18 returns.

19 Q You testified, and the documents I think  
20 indicate, that Alison Burton from your office did a  
21 lot of the actual hands-on work?

22 A Yes.

1 Q Would that be both in connection with  
2 preparing the '87, '88 and '89 returns that were  
3 filed in July of 1990, and also in the subsequent  
4 cursory analysis of Whitewater?

5 A Yes.

6 Q Was Ms. Burton a CPA?

7 A Yes.

8 Q What was her experience level at that time?

9 A Let me see. She quit being a CPA in --  
10 probably about -- I'm trying to think. Five or six  
11 years or something like that, five, six or seven  
12 years as CPA.

13 Q Do you know whether Ms. Burton ever had any  
14 direct contact with Mr. and Mrs. Clinton about the  
15 work she did on Whitewater?

16 A No, she did not.

17 Q You are certain she did not?

18 A She did not.

19 Q She would have reported to you?

20 A She was reporting to me. In fact, any work  
21 papers that she was preparing and any analysis was  
22 under my direction.

1 Q So she neither would have obtained any  
2 information from the Clintons nor provided any  
3 information to the Clintons about the work that she  
4 was doing?

5 A No, not at all.

6 Q Moving forward then to the cursory review,  
7 to use your terminology, that you did for the  
8 Clintons after you completed the first set of  
9 Whitewater corporate returns, am I correct in  
10 understanding that that is something that  
11 Mrs. Clinton asked you to do?

12 A Yes.

13 Q And at that time, I take it Mrs. Clinton  
14 still did not know how much money the Clintons had  
15 invested in Whitewater or what the value or net worth  
16 of the corporation was at that time?

17 A That is right.

18 Q And in general, was the purpose of your  
19 review, had you been able to do so, to obtain answers  
20 to those questions?

21 A Yes.

22 Q Am I correct in understanding that in both

1 instances the information available to you at that  
2 time was not adequate for you to reach any  
3 conclusions?

4 A The information was not adequate, and I  
5 mean, the records were pretty bad for the  
6 corporation. So it would have been very  
7 time-consuming and Ms. Clinton was not wanting to  
8 undertake that kind of -- not wanting to hire  
9 somebody to do that.

10 Q In terms of time, this is now in the late  
11 summer, early fall of 1990; am I correct?

12 A I'm sure, yes.

13 Q As of that time, based upon your knowledge  
14 and involvement, the Clintons would not have known,  
15 did not know either how much money they had invested  
16 in Whitewater, whether the corporation had made or  
17 lost money, or what the corporation's assets were  
18 worth at that time? Is that a fair summary of the  
19 status of the matter?

20 A That's right.

21 Q Between the time of your completion of that  
22 cursory review and your meeting with Mr. Kennedy and

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1 Mrs. Clinton that you testified to, did you do any  
2 further work on Whitewater?

3 A I don't remember doing any additional  
4 work.

5 Q Let's move forward then to the time of your  
6 meeting with Mr. Kennedy and Mrs. Clinton. Was the  
7 purpose of that meeting so that they could obtain  
8 information from you about Whitewater, or was the  
9 purpose of the meeting for them to provide you  
10 information about Whitewater?

11 A No. It was for them to obtain information  
12 as to what we had in the files. Mrs. Clinton, like I  
13 said before, not being an accountant or a corporate  
14 attorney, she didn't know all the -- she wanted me,  
15 instead of she relaying to Mr. Kennedy what I had  
16 been trying to relate to her, she wanted me to relate  
17 it to him.

18 It was my understanding Mr. Kennedy was a  
19 corporate attorney and he would be able to help her  
20 and advise her and follow-up from there.

21 Q Your understanding at that time was  
22 Mrs. Clinton was looking to you as the person who was



1 available to her at that time, since Mr. McDougal was  
2 not available, who knew the most about Whitewater and  
3 would be able to provide the most information to  
4 Mr. Kennedy?

5 A Well, I knew very little about Whitewater,  
6 even then. I knew a lot more than Mrs. Clinton,  
7 based on the fact that my understanding --

8 Q You may not have known as much as  
9 Mr. McDougal or perhaps as much as Mr. James, but  
10 they weren't readily available to Mrs. Clinton at  
11 that time.

12 So then, did you then provide Mr. Kennedy  
13 with all the information, to the best of your  
14 ability, that you had on Whitewater?

15 A I answered his questions that he had as far  
16 as establishing what assets Whitewater had had, what  
17 had happened to the assets, which really we didn't  
18 know, and what assets looked like they were still on  
19 the books, and what we had done, because he asked us  
20 if we had done a lot of things that were really legal  
21 work that needed to be done, and I told him no. A  
22 lot of the things that he asked we had not done.

1 So it was my understanding that he was  
2 going to do it or somebody was going to do it.

3 Q At the time of that meeting with  
4 Mr. Kennedy, did you have an understanding as to  
5 whether or not he had been able to obtain answers to  
6 the questions that Mrs. Clinton previously had asked  
7 you? And in particular what I'm talking about is how  
8 much money the Clintons had put into Whitewater,  
9 whether the corporation had made or lost money and  
10 what the corporation might have been worth.

11 A No, I don't think that -- I think that he  
12 was -- it is my opinion that he was just trying to  
13 learn more about Whitewater so he could do some work  
14 for Mrs. Clinton on Whitewater.

15 Q And then moving forward from that meeting,  
16 did you have any further discussions with Mr. Kennedy  
17 up until the meeting that you testified about --  
18 actually, I can't remember without going back through  
19 my notes whether you testified that Mr. Kennedy --

20 A No. That's the only time I ever met with  
21 Mr. Kennedy. The only other time I talked to  
22 Mr. Kennedy was during the campaign, he called asking

1 me to release records to him, and I told him no.

2 Other than that, I have never discussed  
3 Whitewater with Mr. Kennedy or anything else  
4 concerning the Clintons.

5 Q Did Mr. Kennedy ask you any questions about  
6 the tax benefits that the Clintons might have  
7 obtained from their investment in Whitewater?

8 A I don't remember.

9 Q Is that something that you as a tax  
10 preparer and CPA would be likely to remember if he  
11 had asked you about it?

12 A No, because that is something that many  
13 times, as a tax preparer, when I would be talking to  
14 somebody about an investment like this, there would  
15 probably be a big likelihood that he would have asked  
16 that question and we would have discussed that.

17 Q But sitting here today, you don't have any  
18 recollection one way or another?

19 A I don't have an exact recollection. It has  
20 been too long and too much has happened since then.

21 Another thing is, remember, back then I had  
22 no idea that the Governor and Mrs. Clinton would be

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1 coming to Washington, D.C. I had no idea that  
2 millions of people would be spending months and years  
3 investigating this forwards and backwards.

4 Q A few people are spending millions and  
5 millions of dollars investigating this. I'm not sure  
6 about that millions of people.

7 A I was just thinking it was another client,  
8 not any big deal.

9 Q I understand.

10 Now, in your June 1st letter to  
11 Mrs. Clinton that we referred to numerous times  
12 today, Mr. Jiampietro pointed out to you that the  
13 second paragraph states "the tax return for the  
14 fiscal year ending May 31, 1990 is due on August 15  
15 of this year and we can make whatever adjustments are  
16 necessary for the previous year on that return."

17 You testified, I believe, that you did not  
18 have any subsequent conversations with Mrs. Clinton  
19 about filing Whitewater corporate tax returns until  
20 you raised the issue at the later meeting with  
21 Mr. Foster and Mr. Hubbell; is that correct?

22 A I can't remember if I said that. I

1 remember at some point in time telling Mrs. Clinton  
2 that the subsequent year returns needed to be filed.  
3 At that point in time, I don't really know -- I did  
4 not have enough information and I don't know if she  
5 had enough information to know what would be done.

6 I also remember one thing. At some point  
7 in time Mrs. Clinton was talking to Mr. McDougal's  
8 attorney, Mr. Sam Heuer, because I remember she  
9 mentioned that to me, about how to resolve.

10 Q Before you go on, I'm confused about one  
11 thing. Mr. Jiampietro earlier showed you some notes  
12 of a telephone conversation with Mrs. Clinton and, if  
13 memory serves me correctly, Loretta Lynch during the  
14 campaign I think maybe in February where the notes at  
15 least indicate some reference to the fact that the  
16 corporate returns needed to be filed.

17 What I'm asking is whether you had any  
18 discussions with Mrs. Clinton between the time of the  
19 filing of the first set of returns and that telephone  
20 conversation during the Presidential campaign about  
21 the --

22 A Not during the Presidential campaign. But

---

1 from that June 1st letter, after that, I am sure that  
2 I mentioned to Mrs. Clinton and I'm sure that I may  
3 have mentioned talking to Mr. Kennedy that --

4 Q That was going to be my next question,  
5 whether in the meeting with Mr. Kennedy and  
6 Mrs. Clinton you mentioned the corporate returns.

7 A I'm sure it was mentioned.

8 Q When you say you are sure it was mentioned,  
9 do you remember mentioning it or does that mean you  
10 think you probably would have mentioned it?

11 A I hope you realize that unless you show me  
12 a document today, anything that I am going from  
13 recollection is my best memory. I mean -- unless I  
14 know something was a procedure in my office that I  
15 know we never failed to do, that I can tell you  
16 definitely positively happened.

17 But unless there is a letter or my work  
18 papers or some notes or something that it was a  
19 definite procedure in my office, I don't know for  
20 sure.

21 Q When you answer my questions, it would be  
22 very helpful for me if you would distinguish between

1 what you actually remember doing and what you think  
2 you must have done, because I know I drove to work  
3 last week but I don't remember doing it. Remembering  
4 something happened is not the same as thinking it  
5 must have happened.

6 A This is what I'm telling you. What I'm  
7 testifying today, unless you show me a letter or a  
8 work paper or unless I told you that it was a  
9 definite procedure in my office and there was no way  
10 I would have missed it, like for instance on that  
11 federal disclosure report, there is no way we would  
12 have made that decision on whether to leave out  
13 Whitewater.

14 Q On this point and on this meeting, there is  
15 something you testified to earlier that I'm still not  
16 clear about, because you testified that you had a  
17 clear recollection that the two boxes of documents  
18 that Mrs. Clinton had obtained and provided to you  
19 were given to her and Mr. Kennedy at the Rose Law  
20 Firm at that meeting or at about the time of the  
21 meeting.

22 A Not at that meeting. Sometime after the

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1 meeting, either before the meeting or after the  
2 meeting -- at the meeting it was established where  
3 those boxes were because Mr. Kennedy needed them to  
4 perform whatever work he was going to do.

5 Q That's helpful. I don't think that came  
6 out in your prior testimony. You remember at the  
7 meeting there was some discussion about the boxes and  
8 Mr. Kennedy asked for them, and at some later point,  
9 you instructed someone to give them to him?

10 A What I'm saying is I don't remember if the  
11 boxes went to the Rose Law Firm before or after the  
12 meeting. I don't remember if the boxes were already  
13 at the Rose Law Firm at the time of the meeting.

14 What I remember is that we were not going  
15 to do any more work on Whitewater, and Mr. Kennedy  
16 was going to do whatever other work needed to be done  
17 on Whitewater. He took the records.

18 Q I understand about those records. It is  
19 not clear to me whether, sitting here today, you have  
20 a present recollection of providing to Mr. Kennedy  
21 and Mrs. Clinton the earlier materials that you had  
22 obtained from Mr. James, the books of the



1 corporation.

2 A I do not have a clear recollection one way  
3 or another. I don't know if those may have been left  
4 in our office. At the time of the campaign, they  
5 were still looking for things and it could have been  
6 those books. We may have had them. I just don't  
7 remember.

8 Q You don't remember?

9 A No. I testified to that before.

10 MR. COLE: I would like to go on. I think  
11 if we don't let you out of here in about five  
12 minutes -- your flight is at 8:00?

13 MR. LOFTON: Yes.

14 MR. COLE: I think we only have about five  
15 minutes if you are going to catch your plane. I will  
16 stop now.

17 MR. JIAMPIETRO: I have one follow-up  
18 question I would like to ask.

19 EXAMINATION

20 BY MR. JIAMPIETRO:

21 Q At one point earlier in your testimony you  
22 stated all of the documents you would have had

1 relating to Whitewater would have been delivered to  
2 the Rose Law Firm, and now you are stating that you  
3 don't have any specific recollection of that. I was  
4 just wondering if you could try to reconcile those  
5 two answers for me.

6 MR. COLE: The reason I am belaboring this  
7 point is, to the best of my knowledge and  
8 understanding, that among the many documents we  
9 obtained from many sources including yourself, the  
10 Rose Law Firm, Mr. Kendall, there is no set of books  
11 for Whitewater.

12 There are some journal entries and various  
13 accounting records but no complete, in-one-place, set  
14 of books. That's why I'm focusing on this set of  
15 documents.

16 THE WITNESS: When we are talking about  
17 "set of books," I don't know that there were some  
18 binders or anything.

19 MR. COLE: What I could call a set of books  
20 would be account ledgers, journal entries, those sort  
21 of things.

22 THE WITNESS: There were some account

1 ledgers. I believe that there were some general  
2 ledgers and I can't remember what else, but there was  
3 something to that effect. I don't remember.

4 On your question, would you repeat that  
5 question again.

6 MR. JIAMPIETRO: Certainly.

7 BY MR. JIAMPIETRO:

8 Q Earlier in your testimony you stated that  
9 you believed at some point in time all of the  
10 documents relating to Whitewater were delivered to  
11 the Rose Law Firm from your office, that you may have  
12 retained some copies but eventually all of the  
13 documents would have been delivered there. You  
14 stated you have no specific recollection as to  
15 whether or not books had been transferred to the Rose  
16 Law Firm or whether or not it was just the boxes that  
17 you subsequently received.

18 I was wondering if you could clarify that,  
19 reconcile those two answers.

20 A I am strictly going on our procedure and  
21 also what Mr. Kennedy needed to do the follow-up  
22 work. When it happened, the boxes were delivered to

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1 the Rose Law Firm either before my meeting with  
2 Mr. Kennedy, sometime before my meeting because they  
3 were already there, or they were delivered to him  
4 after the meeting in order for him to do the work  
5 that needed to be done.

6 The books I do not know. They could have  
7 been put in those boxes at that time. They may have  
8 still been at my office later on. I really don't  
9 know.

10 Q Let me ask you one further follow-up  
11 question. And that would be the policy of your firm  
12 was that you would, after a certain amount of years,  
13 call up your client and say we have these records,  
14 come pick them up, and that is the policy. You said  
15 your firm was pretty strict in following policies.  
16 The Whitewater documents clearly would have been in  
17 some file relating to the Clintons.

18 I'm just saying were you basing it on your  
19 firm's policy, your previous testimony earlier today,  
20 that, at some point, you would have called and said  
21 come pick these documents up, we have these  
22 documents?

1       A    Let me explain this. Clients' records were  
2 never kept in the files. We didn't keep the clients'  
3 records unless we were talking about minute  
4 information about a small individual. Clients'  
5 records that were of any volume whatsoever, even if  
6 we were talking about a folder, like a manila folder,  
7 we had a storage, a big cabinet that was storage.  
8 And all clients' records, boxes, manila folders,  
9 anything, books, they were in that storage place.

10       And it was the responsibility of whatever  
11 accountant that finalized the work, and also the  
12 secretary and other clerical people, to make sure  
13 that the records were obtained. Once the work was  
14 completed, we would give the client the work product  
15 plus the records at that time.

16       If they were not for any reason --  
17 sometimes work was mailed to the clients. If that  
18 was the case, we would call the client and say these  
19 things need to be picked up. Then they would remain  
20 there. If they were not picked up within a certain  
21 reasonable amount of time, the secretary would  
22 continue to call until they were picked up, because

1 we didn't have lots of space to keep those records.

2       Q    Two yes-no questions. One, did you ever  
3 come to learn that any documents relating to  
4 Whitewater or the Clintons were destroyed?

5       A    No, not at all.

6       Q    Did you ever find, in closing up and  
7 wrapping up your business, did you ever come to find  
8 that there were documents or were documents brought  
9 to your attention that related to Whitewater or the  
10 Clintons as you were winding up your private firm?

11       A    The '89 tax return file, we have never been  
12 able to find it. On the move from my firm to Brown,  
13 Rogers & Company, the '89 tax return file  
14 disappeared. We looked everywhere, all the storage  
15 boxes and everything, and that is not there.

16       MR. COLE: I hate to do this but when I  
17 asked you earlier if it was possible that records  
18 could have been lost and mislaid, you very adamantly  
19 told me no, it is not possible. In this instance  
20 that happened?

21       THE WITNESS: I'm talking about in the  
22 move.

1 BY MR. JIAMPIETRO:

2 Q You didn't find any documents relating to  
3 the Clintons or Whitewater after your move?

4 A No, I didn't.

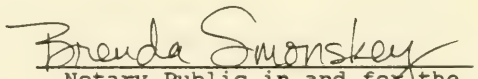
5 MR. JIAMPIETRO: Thank you.

6 (Whereupon, at 7:15 p.m., the deposition  
7 was concluded.)

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9 -----  
10 YOLY REDDEN  
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I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires      SEPTEMBER 14, 1996

**DEPOSITION OF LESLIE A. PATTEN  
IN RE: S. RES. 120**

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**FRIDAY, MAY 31, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of LESLIE A. PATTEN, called for examination pursuant to notice of deposition, at 1:10 p.m. in Room 640-A of the Hart Senate Office Building, before JOANNE LIVERANI, Court Reporter, having been duly sworn by CAROL PATTERSON, a Notary Public within and for the State of Colorado, when were present:

JOSEPH A. JIAMPIETRO, Esq.  
Majority Counsel  
LANCE COLE, Esq.  
Minority Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

HAROLD A. HADDON, Esq.  
Haddon, Morgan & Foreman, P.C.  
150 East Tenth Avenue  
Denver, Colorado 80203  
On behalf of the Deponent.

ALSO PRESENT: STEVEN BANKLER  
JOSEPH H. POTTER  
JAMES W. PITTRIZZI, JR.

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## P R O C E E D I N G S

MR. JIAMPIETRO: Let's go on the record.

Good afternoon, gentlemen. My name is Joseph Jiampietro. I am Majority counsel to the Senate Banking Committee. With me today is Steven Bankler, Majority staff to the Special Committee. Also attending the deposition today is Lance Cole, deputy special counsel for the Minority, and I will let Mr. Cole introduce the gentlemen accompanying him.

MR. COLE: With me are Joseph Potter and James Pittrizzi, also staff members of the Minority.

MR. JIAMPIETRO: Today's deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Senate Banking Committee to conduct an investigation into Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, and other related matters.

Section 1(b)(3)(B) of Resolution 120 authorizes investigation and public hearings into "the activities, investments and tax liability of Whitewater Development Corporation, and as related to

4

Whitewater Development Corporation, of its officers, directors and shareholders." These subjects will be the primary focus of today's deposition.

The testimony is going to be taken under oath, and the stenographer will prepare a record of questions and answers. If you agree to sign a confidentiality agreement, a copy of the transcript will be made available to you for corrections. It must be returned to the Committee with any corrections.

Prior to any public hearings, you will be provided with a copy of your deposition transcript four days in advance of your testimony for the limited purpose of preparing yourself for the testimony at the public hearings.

A copy of the transcripts will be Federal Expressed to you as soon as we receive it. In this case, it probably will be on Monday.

MR. HADDON: My understanding you do not anticipate any public hearings that will require Mr. Patten's presence.

MR. JIAMPIETRO: At the current time no



1 decision has been made as to whether or not public  
2 hearings will be held with Mr. Patten or Mr. Lyons  
3 appearing as witnesses.

4 The witness may be represented by counsel.  
5 At this time I would like to have counsel for the  
6 witness state his appearance for record.

7 MR. HADDON: My name is Hal Haddon, Denver,  
8 Colorado, appearing on behalf of Mr. Patten.

9 MR. JIAMPIETRO: Pursuant to the procedures  
10 set forth in Resolution 120, objections as to the  
11 form of questions will be noted for the record.  
12 There are two grounds upon which counsel may object  
13 and give an instruction not to answer: Privilege and  
14 scope. The Committee Chairman will rule on  
15 objections where the witness refuses to answer a  
16 question.

17 Would you please swear in the witness.  
18 Whereupon,

19 LESLIE A. PATTEN  
20 was called as a witness and, having first been duly  
21 sworn, was examined and testified as follows:

22 EXAMINATION

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1 BY MR. JIAMPIETRO:

2 Q Welcome, Mr. Patten. Please state your  
3 name for the record.

4  
5 A My name is Leslie A. Patten.

6  
7  
8 Q What is your occupation?

9 A I am a certified public accountant.

10 Q Would you please give us a brief  
11 description of your education and any accounting  
12 degrees you've received.

13 A I am a graduate of Drake University in Des  
14 Moines, Iowa. I have a BS degree in business  
15 administration with an emphasis in accounting. I  
16 obtained my CPA certificate in the state of Illinois  
17 in 1972, and I obtained my license here in Colorado  
18 by reciprocity in 1980. I have attended various and  
19 sundry courses in connection with maintenance of my  
20 certification as a public accountant.

21 MR. COLE: Mr. Patten, our court reporter  
22 is having trouble hearing you. You will have to stay

1 as close to your speakerphone and speak as loudly as  
2 comfortable for you.

3 THE WITNESS: Yes, sir.

4 I have attended numerous continuing  
5 education courses.

6 BY MR. JIAMPIETRO:

7 Q Could you please give us a brief  
8 description of your work history as a public  
9 accountant, including the firms that you have worked  
10 for and your position with those firms.

11 A I began my accounting career and business  
12 career with the firm of Peat, Marwick & Mitchell in  
13 1963. I rejoined them after military service in 1968  
14 and was with that firm until approximately November  
15 of 1972, I believe, or May of 1972. Following my  
16 employment there, I joined Associates Financial  
17 Services on the controller's staff.

18 Q On what staff?

19 A On the controller's staff. Following my  
20 employment at Associates Financial Services, I was  
21 employed as vice president and comptroller of the  
22 Omaha National Bank. In 1975, I became senior vice

1 president in charge of operations for Jefferson Bank  
2 & Trust in Lakewood, Colorado. I was subsequently,  
3 in 1977, promoted to president of that organization,  
4 and remained in that position until December of 1980.

5 Q Could you please restate your last  
6 sentence.

7 A And remained in that position until  
8 December of 1980. Following my employment at  
9 Jefferson Bank & Trust, I formed a financial  
10 consulting firm called Patten, McCarthy & Associates,  
11 Inc., which was subsequently known as Patten, McPhee  
12 & Associates. And in June of 1994 I joined the  
13 regional accounting firm of Baird, Kurtz & Dodson.

14 Q Prior to this deposition, have you had any  
15 previous interviews and/or depositions by law  
16 enforcement authorities?

17 A No.

18 Q Have you had any discussions with anyone  
19 about Whitewater Development Corporation after you  
20 got your notice of this deposition?

21 MR. HADDON: I object to the form of the  
22 question insofar as it asks for discussions with

1 counsel. He can answer as to --

2 MR. JIAMPIETRO: That's fine. Other than  
3 with counsel.

4 THE WITNESS: Following the notice of  
5 deposition?

6 BY MR. JIAMPIETRO:

7 Q Yes.

8 A No, I have had no conversations with anyone  
9 other than counsel.

10 Q Could you -- I am going to ask you some  
11 questions relating to the prelude to the Lyons report  
12 and the preparation of the Lyons report. How did  
13 your firm, Patten, McCarthy, come to be involved in  
14 the preparation of the Lyons report?

15 A I was contacted by Mr. Lyons, who was  
16 seeking to engage us to assist him in reviewing the  
17 financial affairs of Whitewater Development  
18 Corporation.

19 Q When was your firm or you first contacted  
20 regarding preparing this report?

21 A Sometime in early March of 1992.

22 Q How was the project initially described to

---

10

1 you?

2 A It was initially described to me that there  
3 had been questions raised in the course of the 1992  
4 Presidential campaign as to the investment in  
5 Whitewater Development Company by the Clintons.  
6 There was uncertainty as to what the financial status  
7 and condition of Whitewater Development Corporation  
8 was at that current time, and there was a desire to  
9 see if the financial condition could be determined as  
10 of that current time.

11 Q Who described the project to you initially?

12 A My initial contact, as I stated, was with  
13 Mr. Lyons.

14 Q Did the purpose of the project change over  
15 time?

16 A Not from my perspective.

17 Q When did the substantive work on report  
18 begin?

19 A I would have to consult my time records to  
20 properly respond to that question.

21 The substance of the work began shortly  
22 after my initial contact with Mr. Lyons.

1 Q And how long were you engaged in preparing  
2 the report?

3 A Both the on-site field work as well as the  
4 report preparation encompassed approximately two  
5 weeks.

6 Q What do you mean by "on-site field work"?

7 A Mr. Weese, who was associated with our  
8 firm, went to Little Rock to obtain documents  
9 pertaining to Whitewater Development Company and to  
10 obtain other relevant evidential matter to assist us  
11 in reconstructing the financial position of  
12 Whitewater.

13 Q Could you briefly summarize what other  
14 evidential matter was collected?

15 A Well, I believe that the majority of the  
16 evidential matter that we collected is included in  
17 the documents that were provided by -- under subpoena  
18 to the Senate Committee, some 2000 documents in that  
19 production.

20 Q Could you generally describe the categories  
21 of evidential matter that you collected?

22 A What I have characterized as the

1 accountant's work papers for Whitewater which were  
2 basically trial balances, handwritten trial balances  
3 that we understood were prepared by Whitewater  
4 Development accountant Charles James. I have them  
5 for all relevant years.

6 In addition, we had copies of the  
7 Whitewater Development tax returns. We were provided  
8 with a limited number of canceled checks for  
9 Whitewater Development Company, as well as check  
10 registers or check stubs. Again, this was not a  
11 comprehensive group of documents.

12 We were provided information in the form of  
13 canceled checks by the Clintons. And we had various  
14 other documents that had been produced to us during  
15 the site visit, either prepared by Whitewater  
16 Development Company or other related parties.

17 Q Would you briefly describe the persons who  
18 performed the substantive work on report and the role  
19 that they played in preparing the report?

20 A Mr. Weese and myself were the parties  
21 involved in preparing the report. We obviously had  
22 secretarial assistance, but in terms of professional



1 work being done it was Mr. Weese and myself.

2 Mr. Weese conducted the site visit,  
3 collected the documentation that he could collect,  
4 and he returned to Denver. He had begun his  
5 analysis. I reviewed his analysis and drafted the  
6 document that became the final report that we sent to  
7 Mr. Lyons.

8 Q I would like to distinguish between limited  
9 contacts by other persons and substantive roles  
10 played by other persons in the question that I am  
11 going to ask you, and I would like to limit the  
12 question to the latter, which is substantive roles  
13 played by persons.

14 Did Mr. Lyons play a substantive role in  
15 the preparation of the report?

16 A Not in the preparation of the report.  
17 Obviously he was furnished copies of the report. He  
18 may have made some suggestions with regard to what I  
19 call form issues, as to -- as to specific records  
20 that may have been used. But the report was  
21 essentially my work product. It was my work  
22 product.

1 Q Did anyone from the 1992 Clinton  
2 Presidential campaign perform any substantive work on  
3 the report?

4 A No. Obviously there were campaign  
5 personnel who assisted Mr. Weese in obtaining  
6 documents.

7 Q Could you please describe to us the persons  
8 who were involved in helping Mr. Weese obtain the  
9 relevant documentation?

10 A Mr. Weese's primary contact was Loretta  
11 Lynch. There may have been one or two other campaign  
12 workers that were assisting Ms. Lynch, but I don't  
13 recall their names at this time.

14 Q Could you describe for us the extent of  
15 contacts and the substance of the contacts between  
16 Mr. Weese and Loretta Lynch?

17 A Since I wasn't present, I don't believe  
18 that I can, other than to say that Mr. Weese worked  
19 through Ms. Lynch with respect to obtaining whatever  
20 documents he obtained during the course of his site  
21 visit.

22 Q I am going to ask you some questions in a

1 moment regarding specific meetings and telephone  
2 conversations with a number of persons, including  
3 Ms. Lynch.

4 Could you please describe for us the  
5 substantive work performed by your firm on the  
6 report; for example, the methodology you used?

7 A Obviously we tried to obtain as much  
8 documentation as possible; however, because of the  
9 passage of time, inability to access certain bank  
10 records, we did not have complete documentation.

11 Mr. Weese started the project by going to  
12 the tax returns that had been filed for Whitewater  
13 Development Company. We also utilized the  
14 accountant's work sheets that I referred to  
15 previously as a primary source document, along with  
16 the Whitewater Development tax returns. Those were  
17 the two primary documents which indicated  
18 preliminarily what the financial position of  
19 Whitewater might be at any point in time. And we  
20 used the other documentation that we had on a  
21 corroborative basis to establish whether or not those  
22 amounts were accurate, and if there were other

1 adjustments that needed to be made to the numbers  
2 that were reflected in those two sets of documents.

3 Q Who decided what work would be done by your  
4 firm and how it would be done?

5 A Mr. Weese and myself.

6 Q Who provided you with the materials or  
7 records used to prepare your report?

8 A Because Mr. Weese did the site work I  
9 cannot fully answer that question. I am aware that  
10 generally, as I stated before, that campaign workers,  
11 and specifically Loretta Lynch, assisted Mr. Weese in  
12 gathering the documentation that we did receive.

13 Q Were all the records provided to you to  
14 prepare the report produced to the Special Committee?

15 MR. HADDON: You mean the Senate Committee,  
16 your Committee?

17 MR. JIAMPIETRO: Yes.

18 THE WITNESS: I have produced all documents  
19 I have in my possession that I have to the Senate  
20 Committee. What other documents may exist out there,  
21 I don't know whether they have been produced or not,  
22 but I have produced all the documents that we have.

1 BY MR. JIAMPIETRO:

2 Q Were any records destroyed prior to your  
3 production to the Committee?

4 A No.

5 Q Were copies of the records delivered to any  
6 other parties?

7 A Yes. We have provided copies of the  
8 records to the Independent Counsel.

9 Q Were copies of the records provided to  
10 anybody related to the Clinton Presidential campaign?

11 A Not that I am aware of.

12 MR. COLE: Are we clear on what the records  
13 are? We are distinguishing between the final report  
14 and the underlying -- I assume your question talks  
15 about the underlying documentation that was used in  
16 the preparation of the report.

17 MR. JIAMPIETRO: I am referring to the  
18 underlying documentation used in the preparation of  
19 the report.

20 BY MR. JIAMPIETRO:

21 Q Were any copies of the underlying documents  
22 produced or delivered to anyone in the White House?

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18

1 A It is my understanding that copies have  
2 been produced and delivered to Mr. Kendall who is the  
3 attorney for the Clintons.

4 Q Who wrote the report?

5 A I consider myself to be the author of the  
6 report. Although Mr. Weese had some input to it, I  
7 did the majority of the drafting.

8 Q You noted previously that Mr. Weese had a  
9 number of contacts with Loretta Lynch. Based on your  
10 knowledge while your firm was preparing the report,  
11 were you or anyone else at your firm contacted by  
12 other persons associated with the Clinton  
13 Presidential campaign?

14 A I'm not sure I understand your question.  
15 As to what?

16 Q What I am trying to learn is whether any  
17 persons associated with the Presidential campaign  
18 contacted you or anyone involved in preparing the  
19 report during the report's preparation?

20 A Well, obviously I had contact with  
21 Mr. Lyons, and as I stated, we had contact with  
22 Loretta Lynch. I had contact with, I believe, a Jim

1 Hamilton, and a Richard Klursaritz.

2 Q Could you spell that for us if you have the  
3 spelling?

4 A If I can refer to a document, I will give  
5 you an accurate spelling.

6 Q Certainly, take your time and do so.

7 A Okay. I cannot locate the document I had,  
8 but I believe the spelling is K-l-u-r-s-a-r-i-t-z.

9 Q Is there anyone else you can recall other  
10 than Mr. Lyons, Loretta Lynch, Mr. Hamilton, and  
11 Richard Klursaritz?

12 A I think, as I indicated in our report, I  
13 had initiated a call or Mr. Lyons initiated a call at  
14 my request to Mrs. Clinton. There may have been  
15 others, but I don't recall at this point in time.

16 Q I would like to go through each of these  
17 people with you and ask you some questions relating  
18 to your contacts with each of them.

19 First, Mr. Lyons, could you briefly  
20 describe the extent of your contacts with Mr. Lyons?

21 A Well, I was in fairly regular communication  
22 with Mr. Lyons. Mr. Lyons was anxious to get this

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20

1 project completed and was seeking to have periodic  
2 updates as to where we were in the process.

3 Q Based on your understanding, what was  
4 Mr. Lyons's role with regard to this report?

5 A He had been assigned the task by the  
6 campaign to seek the answers to the questions that  
7 were being raised in the press at that point in time.

8 Q How often in any given week would you speak  
9 to Mr. Lyons?

10 A I cannot recall with specific recollection,  
11 but it was frequent contact during this two-week  
12 period of time.

13 Q Did you meet with him personally?

14 A I recall that I met with him at least on  
15 two or three occasions regarding this report.

16 Q Could you briefly describe the substance of  
17 those meetings?

18 A Again, as I said, he was wanting an update  
19 as to the status of the project, what our preliminary  
20 conclusions were, and I was informing him as to the  
21 condition of the records, what could and could not be  
22 done. And that basically was the substance of the



1 various contacts that I had with Mr. Lyons during  
2 this period of time.

3 Q Why don't we move on to Loretta Lynch.  
4 What was the extent of your contacts with Loretta  
5 Lynch, and to the best of your knowledge, Mr. Weese's  
6 contacts with Loretta Lynch?

7 A With respect to the latter and to the best  
8 of my knowledge, I believe that Mr. Weese probably  
9 had more contacts with Loretta Lynch than I did. Any  
10 contact that I had with Loretta Lynch would have been  
11 with respect to preliminary copies of the report that  
12 were faxed to her.

13 Q With regard to Jim Hamilton, what was his  
14 role with regard to the report?

15 A I don't recall what the extent of my  
16 conversation with Mr. Hamilton was. And I believe we  
17 had provided him a copy of a preliminary report, and  
18 he may have had questions or other things that he  
19 wanted answered. He didn't have any direct input to  
20 the content of the report. He was simply furnished a  
21 copy of the report.

22 Q With regard to Richard Klursaritz, what was

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1 his role with regard to the report, and what was the  
2 extent of your contacts with him?

3 A I believe I only had one or two contacts  
4 with Mr. Klursaritz. I take it he was also provided  
5 a copy of the report. I am not sure at this point in  
6 time, and I don't recall any specific recollection  
7 why he obtained or received a copy of the report, but  
8 he did.

9 Q Would you briefly describe the extent and  
10 substance of your contacts with Hillary Rodham  
11 Clinton regarding Whitewater Development Corporation?

12 A As I previously indicated, I had requested  
13 through Mr. Lyons that Mr. Weese and I would like to  
14 visit with Mrs. Clinton with respect to certain items  
15 that we were trying to get clarification on. And  
16 that visit was accomplished telephonically.

17 Q Would you briefly describe the items which  
18 you were trying to clarify?

19 A We were seeking clarification on the --  
20 what I'll characterize as the lot 13 transaction,  
21 with respect to the borrowing that was initially  
22 accomplish at Madison Bank & Trust or Bank of

1 Kingston. And also, we were seeking clarification  
2 with respect to a canceled check that had a blank  
3 payee in the amount of \$9000.

4 Q Could you please describe for us what you  
5 learned from your conversation with Mrs. Clinton?

6 A I cannot recall with respect to lot 13  
7 specifically what I may have learned from  
8 Mrs. Clinton. With respect to that, at this time,  
9 however, whatever I did learn would have been  
10 reflected in our final work product.

11 Secondly, with respect to the \$9000, it was  
12 Mrs. Clinton's firm view that Mr. McDougal had  
13 requested that check for the purposes of paying  
14 interest.

15 Q Did you have any other contacts with  
16 Mrs. Clinton, either in the preparation of the report  
17 or after the report was prepared, with regard to the  
18 Whitewater Development Corporation?

19 A Not other than obviously she was furnished  
20 a copy of the report.

21 Q Did you have any contacts with Governor  
22 Clinton with regard to the preparation of the

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1 reports?

2 A No.

3 Q Did you have any contacts with Mr. Clinton  
4 after the report was prepared?

5 A Regarding the report?

6 Q Yes, regarding -- well, regarding  
7 Whitewater Development Corporation.

8 A No.

9 Q Did Mr. Weese, to your knowledge, have any  
10 contacts with Mrs. Clinton or Governor Clinton with  
11 regard to Whitewater Development Corporation?

12 A He did not other than he was a participant  
13 in that telephone call to Mrs. Clinton which I  
14 described.

15 Q Did you have any discussions with Hillary  
16 Clinton or Governor Clinton with regard to  
17 investments prior to the incorporation of Whitewater,  
18 or did your prior answer incorporate that -- I am  
19 wondering about the land transactions, the investment  
20 in the land, which occurred prior to the  
21 incorporation in June of 1979.

22 A At what point in time?

1 Q Well, either -- I'm interested in finding  
2 out the extent of your conversations with the  
3 Clintons relating to Whitewater, both  
4 preincorporation and post-incorporation, and my  
5 question is basically whether or not your response to  
6 my prior questions solely dealt with conversations  
7 dealing with Whitewater after it was incorporated, or  
8 if it was a global response to all contacts with the  
9 Clintons.

10 MR. HADDON: This is Mr. Haddon. I am not  
11 sure I understand the question. Are you asking  
12 whether or not Mr. Patten posed questions to Hillary  
13 Clinton about preincorporation matters, or are you  
14 asking whether or not he did any work  
15 preincorporation? I am just not clear on the  
16 question.

17 MR. JIAMPIETRO: Certainly. Let me  
18 rephrase the question.

19 BY MR. JIAMPIETRO:

20 Q You've testified previously that you had  
21 this one conversation with Mrs. Clinton with regard  
22 to Whitewater Development Corporation. I am

1 wondering whether or not there were any other  
2 contacts with Mrs. Clinton regarding, not just  
3 Whitewater Development Corporation, but the broader  
4 issue of the investment in the land prior to the  
5 incorporation. I am just trying to clarify whether  
6 or not you had just one meeting with Mrs. Clinton  
7 with regard to these -- or one conversation with  
8 Mrs. Clinton with regard to Whitewater.

9 A That's correct. One conversation.

10 Q Did you or Mr. Weese have any contacts with  
11 Susan Thomases?

12 A I did not, and I don't know whether  
13 Mr. Weese did or not.

14 Q Did you or Mr. Weese have any contacts with  
15 William Kennedy?

16 A I'm sorry?

17 Q William Kennedy.

18 A I did not. I don't know if Mr. Weese did  
19 or not.

20 Q Bruce Lindsey?

21 A I had no contacts nor do I believe -- well,  
22 I can't speak as to Mr. Weese. I did not have any

1 contact with Mr. Lindsey during the course of our  
2 work on this project. I don't know whether Mr. Weese  
3 had contact or not.

4 Q Webster Hubbell?

5 A I did not. I can't speak as to Mr. Weese.

6 Q Vincent Foster?

7 A I did not. I cannot speak as to Mr. Weese.

8 Q Betsey Wright?

9 A I did not. I can speak as to Mr. Weese.

10 Q Jonathan Foster?

11 A I did not. I cannot speak as to Mr. Weese.

12 Q Jim Blair?

13 A I did. I cannot speak as to Mr. Weese.

14 Q Harold Ickes?

15 A I have no recollection of Harold Ickes.

16 And, again, I cannot speak as to Mr. Weese.

17 Q Who prepared the exhibits to the report?

18 A I believe that Mr. Weese had prepared that  
19 exhibit.

20 Q How long did it take you, from start to  
21 finish, to prepare the final versions of the report?

22 MR. COLE: I thought he already testified

1 it was two weeks including the collecting of the  
2 documentation and the drafting of the report.

3 MR. JIAMPIETRO: If that's correct, that is  
4 fine.

5 THE WITNESS: That is correct.

6 BY MR. JIAMPIETRO:

7 Q Regarding your firm's work relating to  
8 Whitewater Development Corporation and Whitewater  
9 issues, please describe the nature and extent of  
10 contacts by you or others in your firm, if any, with  
11 Yoly Redden.

12 A It is my understanding that Mr. Weese had  
13 talked to Ms. Redden when he was in Little Rock. I  
14 am aware this he had subsequent telephone  
15 conversations with her. I have spoken to her once,  
16 but whatever the matter was, I referred it back to  
17 Mr. Weese at the time. I had no direct conversation  
18 with Ms. Redden on any substantive issue.

19 Q Regarding the work performed relating to  
20 Whitewater, please describe the nature and extent of  
21 any contacts by you or other persons at your firm  
22 with Alison Burton.



1 A I don't even know who that is.

2 Q Regarding the work performed relating to  
3 Whitewater, please describe the nature and extent of  
4 contacts by you or other persons at your firm with  
5 Charles James.

6 A I had no contact with Charles James. And  
7 to the best of my knowledge, Mr. Weese did not  
8 either.

9 Q Gaines Norton?

10 A I had no contact with Gaines Norton. And  
11 to the best of my knowledge, I do not believe that  
12 Mr. Weese did either.

13 Q Susan or Jim McDougal?

14 A I have had no contact with the McDougals,  
15 and to the best of my knowledge, Mr. Weese did not  
16 either.

17 Q I would like to ask you some specific  
18 questions relating to your firm's work with regard to  
19 Whitewater. I would like you to refer to document LP  
20 00344 through 349.

21 A Can you give me a description of the  
22 document so I can go to it more quickly?

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1 Q It is a spreadsheet showing questions  
2 regarding Whitewater Development Company. The  
3 columns --

4 A Yes, I have it.

5 Q Okay. Did you prepare this document?

6 A No, I did not.

7 Q Do you know who prepared this document?

8 A I don't.

9 Q Did you discuss this document ever with  
10 anyone in your firm?

11 A I don't recall at this point in time  
12 whether Mr. Weese and I discussed this or not. I  
13 don't have a recollection of discussing it with him,  
14 but that does not mean that I may not have.

15 Q I would like to refer you to the last entry  
16 on the first page. The entry is dated September 30,  
17 1979. It lists a transaction for the conveyance of  
18 property from the McDougals and Clintons from  
19 Whitewater Development Company. And then the column  
20 headed "Whitewater Development Company," there is a  
21 number of questions posed and I would like to just  
22 ask you those questions.

1 What did Whitewater Development Company pay  
2 for the property conveyed.

3 MR. COLE: You are asking him to answer  
4 these questions now based on his current knowledge  
5 and recollection? Is that the point of this?

6 MR. JIAMPIETRO: That's what I am asking  
7 him.

8 THE WITNESS: My recollection -- and again  
9 I would have to -- they paid a total of \$202,000.

10 BY MR. JIAMPIETRO:

11 Q Could you please refer to document LP  
12 01123.

13 A What is that?

14 Q It is a balance sheet for Whitewater  
15 Development Company, Exhibit A, dated the 18th of  
16 March 1992.

17 A Dated what date?

18 Q The 18th of March '92 in the lower  
19 left-hand corner. Once again, it is LP 01123. I'm  
20 sorry, I didn't ask you to pull this earlier so if it  
21 takes you a few moments, please --

22 MR. HADDON: That's not in the stack that

1 we pulled.

2 MR. JIAMPIETRO: No?

3 THE WITNESS: I'm sorry, I thought it was  
4 in the stack that we pulled. You will have to give  
5 that number to me.

6 MR. JIAMPIETRO: Sure, LP 01123.

7 MR. COLE: What is the date? That the  
8 attachment to the report or one of the drafts of the  
9 report.

10 MR. JIAMPIETRO: As I understand it, it is.

11 MR. COLE: Which report?

12 MR. JIAMPIETRO: The March 18, 1992 draft  
13 of some 55 pages, I believe, which was faxed to  
14 Hillary Rodham Clinton.

15 THE WITNESS: All right, I have it.

16 BY MR. JIAMPIETRO:

17 Q Did you review this document when you were  
18 preparing the report?

19 A Well, certainly I have seen this document.

20 Q What I am wondering is this document lists  
21 under the column -- it is the balance sheet for  
22 Whitewater Development Company, Inc., which -- let me

1 ask you the question.

2 This is your reconstruction of the balance  
3 sheet for Whitewater Development Company; is that  
4 correct?

5 A This is a preliminary work product to that  
6 end.

7 Q In the first column, listing preSeptember  
8 30th, 1979 entries, if you go down to the entry for  
9 "land," it reads \$222,872.32. Does this refresh  
10 your memory as to what Whitewater paid for the  
11 property that was conveyed?

12 A No, sir. I think what refreshes my memory  
13 are the entries below that, with respect to the two  
14 loans that were used in the acquisition of land,  
15 \$202,000 was what was paid for the land. There were  
16 other items subsequently paid for that were added in  
17 to the cost of the land.

18 Q But the land, when transferred into the  
19 corporation, had a value that was greater than the  
20 loans which were used to purchase the property, and  
21 that's what the assets show in the entry for land; is  
22 that correct?

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1 MR. COLE: Are you using value in the  
2 technical sense or in the colloquial sense because  
3 value -- I think you need to phrase your question  
4 more carefully because value is a subjective issue  
5 and what costs may be capitalized into a piece of  
6 property for accounting purposes is a different thing  
7 than value.

8 BY MR. JIAMPIETRO:

9 Q I am asking what was listed as the initial  
10 entry and the initial value of the assets of the land  
11 that was transferred into the Whitewater Development  
12 Corporation when it was incorporated?

13 MR. COLE: And you are asking -- I just  
14 want to understand your question.

15 MR. JIAMPIETRO: I think it is perfectly  
16 clear.

17 MR. COLE: It is not clear to me. I want  
18 to ask a clarifying question. What are you asking  
19 him is what, as an historical fact on the books and  
20 records of Whitewater, was the value or what he  
21 reconstructed and put on his analysis in 1992? Those  
22 may or may not be the same thing.

1 MR. JIAMPIETRO: I have the document which  
2 I have asked him to refer to which lists a value for  
3 the assets, and I am asking him if that was the value  
4 of the assets as he reconstructed it and he prepared  
5 or reviewed this work sheet.

6 MR. COLE: That's a more clear question in  
7 my mind.

8 THE WITNESS: The amount shown on this is  
9 what we concluded from a review of the accountant's  
10 corporate work sheets with respect to the costs that  
11 have been incurred prior to incorporation. Those  
12 costs include the land acquisition cost as well as  
13 any improved -- any capitalized costs associated with  
14 improvement of the property.

15 BY MR. JIAMPIETRO:

16 Q Based on your analysis of this document,  
17 what was transferred to the original owners of the  
18 property in change for the land? For example, were  
19 notes issued, was cash paid, was debt assumed?

20 A Within the corporate work sheets at the  
21 time the books and records at least as reflected by  
22 those work sheets were first established, it

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1 indicated that notes payable were issued to the  
2 Clintons and the McDougals.

3 Q I would like to refer to you document Bates  
4 stamped LP 00105, which is a copy of a report  
5 prepared by you, dated March 23rd, 1992, sent to  
6 Mr. Lyons, signed by Mr. Weese and yourself. I think  
7 this is referred to as the complete report.

8 A L?

9 MR. HADDON: LP 00105.

10 MR. JIAMPIETRO: Yes, through 111.

11 THE WITNESS: All right. I have it.

12 BY MR. JIAMPIETRO:

13 Q In the second full paragraph on the page,  
14 midway through the paragraph, on page 106, it reads  
15 in part "the transfer of the property to WDC resulted  
16 in loans recorded by WDC payable from WDC to the  
17 Clintons and the McDougals. However, no promissory  
18 notes were ever executed between WDC and the Clintons  
19 and the McDougals."

20 What evidence did you have to base your  
21 judgment that notes payable were issued to the  
22 Clintons and McDougals in exchange for the transfer



1 of the property into Whitewater Development  
2 Corporation?

3 A That mischaracterizes this statement. It  
4 clearly says "no promissory notes were ever  
5 executed."

6 Q No, I am just wondering -- and that says  
7 "no promissory notes were ever executed." I am just  
8 wondering what evidence you had that there were notes  
9 payable actually in existence to the Clintons and the  
10 McDougals. For instance, did you ever review the  
11 Clintons's personal income tax returns to see if  
12 there was any interest income reflected on those  
13 returns as Whitewater paid down the loans?

14 MR. COLE: Do you assume in that question  
15 that, in fact, the loans were paid down?

16 MR. JIAMPIETRO: We have significant  
17 evidence of canceled checks and documentation, and I  
18 am sure Mr. Patten can answer your question that the  
19 loan was paid down.

20 MR. COLE: I'm sorry, you have significant  
21 evidence of canceled checks payments to the Clintons  
22 and McDougals by Whitewater, is that what you are

1 saying?

2 MR. JIAMPIETRO: No.

3 MR. COLE: I want to be clear. The people  
4 reading this transcript may not --

5 MR. JIAMPIETRO: Under Generally Accepted  
6 Accounting Principles.

7 MR. COLE: You have testimony on the  
8 record?

9 MR. JIAMPIETRO: By experts working for the  
10 Committee. I am asking him based on his knowledge  
11 whether or not they -- he reviewed the Clintons's  
12 income tax returns to see if there was any interest  
13 income. I think the question speaks for itself. If  
14 you gave him a chance to answer the question,  
15 Mr. Cole, he may be able to come up with an answer.

16 MR. COLE: I want to understand the  
17 question. While it is important to get his testimony  
18 on the record, it is also important for me and the  
19 other people who eventually read this transcript to  
20 understand the question.

21 So if the questions aren't clear, I intend  
22 to ask questions until I understand them. I am sorry

1 if that impedes the question, but that's what I will  
2 do.

3 MR. HADDON: Is the question on the floor  
4 to Mr. Patten whether or not he reviewed any of the  
5 Clintons' personal tax returns to determine whether  
6 or not they reported any interest income from  
7 Whitewater? Is that the question?

8 MR. JIAMPIETRO: That is correct.

9 MR. HADDON: Okay.

10 MR. COLE: That question I understand.

11 MR. HADDON: If that's the question, go  
12 ahead and answer it.

13 THE WITNESS: I had available to us certain  
14 tax returns of the Clintons. I don't recall going  
15 through a review for that specific purpose.

16 BY MR. JIAMPIETRO:

17 Q Did you review any state or federal  
18 disclosure forms to see if these notes payable were  
19 listed by the Clintons?

20 A Which notes payable?

21 Q The notes payable that are referred to in  
22 your report. Loans from Whitewater to the Clintons.

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1 They are recorded as notes payable on the books of  
2 Whitewater, but they were described in your report as  
3 loans to the Clintons.

4 A No, no, no.

5 Q No?

6 A That is not what the report said.

7 Q Why don't we try to clarify what the report  
8 says.

9 A The report says "as noted above, the  
10 original acquisition financing remains the direct  
11 liability of the Clintons and the McDougals.  
12 Therefore, the transfer of property to WDC resulted  
13 in loans reported by WDC payable from WDC to the  
14 Clintons and McDougals."

15 These were not loans to the Clintons and  
16 McDougals. They were loans from the Clintons and  
17 McDougals to Whitewater.

18 Q No, that's exactly right. They were loans  
19 from the Clintons and the McDougals to Whitewater,  
20 which were recorded on the Whitewater books as notes  
21 payable to the Clintons and the McDougals; is that  
22 correct?

1 A That's what the accountant's work sheets  
2 reflect.

3 Q Okay. Would these loans be assets of the  
4 Clintons?

5 A They would be an asset -- recorded as an  
6 asset of the Clintons, yes.

7 Q All I am asking you is whether or not you  
8 had any other documentary evidence, other than the  
9 Whitewater books, which showed these assets listed.  
10 For example, were these assets ever listed on any  
11 disclosure forms which may have been reviewed by you?

12 A I don't recall whether they were reflected  
13 on the disclosure forms or not.

14 Q Let me go back to one of the questions I  
15 was asking you earlier, which is I asked to you look  
16 at the value of the land, when transferred, including  
17 the improvements as recorded on the work sheet, which  
18 you've noted as \$222,872; is that correct?

19 A I am having trouble with your term  
20 "value." That is the historical cost associated  
21 with the property as reflected on the accountant's  
22 work sheets for Whitewater.

1 MR. COLE: Thank you, Mr. Patten. That was  
2 the point I raised about 10 minutes ago.

3 BY MR. JIAMPIETRO:

4 Q The value of the --

5 MR. COLE: I had the same problem you had.  
6 I am glad to see I am not the only one that had that  
7 problem.

8 BY MR. JIAMPIETRO:

9 Q What was the asset carried at on the  
10 Whitewater books when it was initially transferred?

11 A The historical cost associated with that as  
12 reflected -- which document do you want me to look  
13 at?

14 Q You can look at any document. I was  
15 looking at the balance sheet, the reconstructed  
16 balance sheet which lists assets and lists cash,  
17 notes receivable, other receivables.

18 A Are we back to Bates number 01123?

19 Q We are.

20 A Based on this document, that is the  
21 historical cost that was assign to the land when it  
22 was transferred in and recognized on the books of

1 Whitewater.

2 Q So let's try to clarify this. When  
3 Whitewater received the land from the Clintons and  
4 McDougals, the land was booked by Whitewater at  
5 \$222,872; that was the historical cost of the land  
6 that was booked as an asset upon transfer from the  
7 Clintons and the McDougals; is that correct?

8 A That is our analysis, yes.

9 Q In exchange for the transfer of the land,  
10 notes payable were issued to the Clintons and the  
11 McDougals for one-half of the value of that; is that  
12 correct?

13 A The accountant's work sheets reflected  
14 direct recording of a note payable to both the  
15 Clintons and McDougals for approximately one-half of  
16 the value of the land. There were no notes formally  
17 executed that we found.

18 Q In your review of the records, did you  
19 note -- let me rephrase that question.

20 Was there any tax consequence to the  
21 Clintons and the McDougals because the notes to the  
22 Clintons and McDougals exceeded their basis in the

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1 land?

2 A What do you assume their basis in the land  
3 to be?

4 Q One-half of \$202,000, which is the \$182,000  
5 which was the original loan from Citizens Bank of  
6 Flippin, and \$20,000 from the Union Bank, that was  
7 the money that was used to purchase the land  
8 originally, and I'm assuming that that was the basis  
9 of the Clintons and McDougals in the land.

10 A And that's the basis at which it was  
11 transferred in so there should be no gain or loss.

12 MR. COLE: The Majority staff is consulting  
13 so the phone connection is still good. I assume a  
14 question will be forthcoming soon.

15 BY MR. JIAMPIETRO:

16 Q Let me just refer back to the balance  
17 sheet, that is LP 01123, and I know this is  
18 complicated and we are going back a number of years.  
19 But I just would like to clarify this, because this  
20 is an outstanding issue which has come up in a number  
21 of our depositions. And I would like to try to  
22 clarify this to the best of your knowledge,



1 Mr. Patten.

2 As we look at this reconstructed balance  
3 sheet we see the historical cost of the land  
4 reflected as an asset at \$222,872.32. As we move  
5 down the column, we see the liabilities listed, and  
6 we see the liabilities as being a loan from the  
7 Citizens Bank & Trust for \$182,611.20. And a loan  
8 from the Union Bank for \$20,000, for a total of  
9 202,611.20.

10 There is a difference between the total  
11 historical cost of the land, the 222,872, and the  
12 liabilities, the loans which were used to buy the  
13 land of 202,611. And I was just wondering if you  
14 could explain that difference to us.

15 A I think I already have.

16 Q Could you do it one more time. Some of us  
17 who don't have accounting backgrounds might benefit  
18 from hearing the explanation one more time.

19 A At the time that Whitewater Development  
20 Company was incorporated, the historical costs  
21 associated with the acquisition of the Whitewater  
22 property was recorded on the books and records of

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1 Whitewater. One component of that historical cost  
2 was the original acquisition cost of the land. That  
3 acquisition cost was 202,611.20.

4 In the intervening period following the  
5 acquisition of the land and prior to incorporation,  
6 there were other expenses incurred, including the  
7 payment of preincorporation interest which was  
8 capitalized as reflected on the books and records of  
9 Whitewater, as well as other infrastructure  
10 expenditures. All of the costs reflected here are  
11 historical costs which are reflective of the basis,  
12 cost basis that are associated with each of the  
13 items. The land itself is only one component of the  
14 cost that was recorded as land.

15 Q Let me just take this step by step.

16 So the basis that the Clintons and the  
17 McDougals would have had in the land upon transfer  
18 based on your review would have been what?

19 A Their original acquisition cost was  
20 \$202,000 and change.

21 Q Would that have been their basis?

22 A I believe that was their basis, yes.

1 Q Now, setting that aside, go to the basis of  
2 the corporation. Based on your review of the  
3 records, what was the basis that the corporation had  
4 in the land?

5 A As I just explained, the corporation  
6 recorded land at 222,000, one component of which was  
7 the acquisition cost which were incurred by the  
8 Clintons and McDougals.

9 Q What I am trying to understand is I  
10 understand now that there was a difference between  
11 the basis of the Clintons and McDougals in the land  
12 and then the basis that was recorded by Whitewater in  
13 the land.

14 And I am wondering whether or not, based on  
15 your experience as an accountant, that would have had  
16 any tax consequences to the Clintons or the  
17 McDougals. I think the question is actually even  
18 posed on this spreadsheet, LP 00344, under the last  
19 entry, all the way over in the column headed  
20 "individuals." And I believe what you are listing  
21 are questions relating to each particular entity and  
22 you have dates, and you describe the transaction in

1 one column.

2 And then you have different questions  
3 relating to various entities including 101 River  
4 Development which was the entity from which the  
5 Clintons and McDougals purchased the land. The banks  
6 are listed, Whitewater Development Corporation is  
7 listed, the individuals are listed, and then tract 13  
8 is listed at the heading of separate columns under  
9 the heading of "individuals." There is a question  
10 listed, was there income recognized for tax purposes  
11 for the conveyance of the land.

12 And I think what I am trying to understand  
13 is here we had these different bases, I guess is the  
14 correct term, and I am wondering whether or not there  
15 was any income recognized because of this.

16 A No, and there should not have been.

17 MR. COLE: Can you explain why,  
18 Mr. Patten? Because this is obviously an important  
19 question and you are the witness. And I, for one, at  
20 least, would like to have your analysis. I know the  
21 Majority staff has its own analysis, but I am frankly  
22 more interested in your analysis.

1 THE WITNESS: I would like to, before I  
2 answer that question, obtain a document from my  
3 file.

4 MR. COLE: Please do. We can even go off  
5 the record if you want to take a moment to find the  
6 document.

7 MR. JIAMPIETRO: Why don't we go off the  
8 record.

9 (Discussion off the record.)

10 MR. JIAMPIETRO: We are on the record.

11 MR. COLE: Could we have the reporter read  
12 back, or can you not do that since you gave him the  
13 tape? I would like to hear again what the pending  
14 question is.

15 (The reporter read the record as requested.)

16 MR. COLE: And now can you explain your  
17 answer, Mr. Patten?

18 THE WITNESS: Yes, I would like to refer  
19 you and the rest of the people present to the  
20 document that has a Bates number of LP 00400. That  
21 document is a -- what I'll characterize as a trial  
22 balance, that we understood to have been prepared by

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1 Charles James and reflects the initial recording of  
2 the land on the books of Whitewater.

3 MR. COLE: Give us a moment to find it on  
4 this end.

5 We have it.

6 THE WITNESS: All right. I am going to  
7 direct your attention to the descriptive column where  
8 it says "land," then I am going to direct your  
9 attention to the fourth column from the left actually  
10 labeled -- you can read the column numbers 3 and 4 --  
11 references adjustments, debit and a credit.

12 In the debit column, you'll see the  
13 \$202,611.20 which was the acquisition cost of the  
14 land. You will also see two amounts of \$10,130.56  
15 each. Those amounts represent the capitalization of  
16 interest that had been paid prior to the  
17 incorporation.

18 You will then go down to the third  
19 descriptive line, fourth descriptive line and you  
20 will see notes payable, Bill Clinton and H. Rodham  
21 and note payable, GSLC. For each of those you will  
22 see the corresponding credit, for one-half of the

1 202,611.20, of 101,305.60 less the corresponding  
2 credit for the interest that was purported to be paid  
3 by both the respective parties.

4 Therefore, the composition of the \$222,000  
5 reflected as the historical cost of the land as  
6 reflected in the LP 1123 document is based on this  
7 document.

8 I would also point out to you, that in our  
9 report, at LP 00108, observe that Whitewater never  
10 filed an election to capitalize the interest and  
11 therefore the interest should not have been  
12 capitalized and subsequently deducted by Whitewater.

13 MR. COLE: What is the significance of  
14 that, Mr. Patten, for the non-accounting  
15 professionals who will try to understand this  
16 record?

17 MR. HADDON: Significance of which?

18 MR. COLE: The entry in your report that  
19 you just made reference to.

20 THE WITNESS: The significance of it is  
21 that, based on that fact that Whitewater did not  
22 properly file an election to capitalize the interest,

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1 it should not have and it should not have included in  
2 the cost of the land sales which subsequently  
3 occurred.

4 The significance of it is that the  
5 Clintons, having paid that interest and claiming that  
6 interest as a deduction on their tax return, were  
7 proper in doing so.

8 BY MR. JIAMPIETRO:

9 Q Okay, why don't we stay on that \$10,131  
10 payment for a moment. And I would like to refer you  
11 to a document, LP 00105, which you were also just  
12 referring to. And turn to page 108, .1, which is the  
13 first observation in your March 23rd, 1992 complete  
14 report to Jim Lyons.

15 You state "in 1978, an interest deduction  
16 was taken in the amount of \$10,131. This amount,  
17 while paid by the Clintons, was also capitalized as  
18 part of the land costs by WDC as lots were sold, land  
19 cost was expensed for tax purposes. Therefore, both  
20 the Clintons and WDC have claimed a deduction for the  
21 same amount. However, it does not appear that WDC  
22 made an election to capitalize the interest carrying



1 charges."

2 I think you just explained --

3 MR. COLE: Can we read the rest of it into  
4 the record since we are reading it?

5 BY MR. JIAMPIETRO:

6 Q "Further, because of substantial net  
7 operating losses, WDC has realized no tax benefit  
8 from its deduction. Accordingly, WDC should adjust  
9 its tax records and reduce the remaining NOL," which  
10 I believe is net operating loss; is that correct?

11 A That's correct.

12 MR. COLE: Am I understanding this  
13 correctly, Mr. Patten, implicit in what  
14 Mr. Jiampietro just read to you is the conclusion  
15 that since WDC should not -- has no need to adjust  
16 its tax records and reduce the remaining NOL, there  
17 is no need for the Clintons to have adjusted their  
18 prior tax returns; is that correct?

19 THE WITNESS: That's my view.

20 MR. COLE: While this doesn't explicitly  
21 say that, that's one of the points that you were  
22 making in this portion of the report?

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1 THE WITNESS: That's correct.

2 BY MR. JIAMPIETRO:

3 Q Let me just ask you two questions: First,  
4 were you aware of whether WDC ever adjusted its tax  
5 records to reduce the remaining net operating loss?

6 A I have no idea what they did.

7 Q Could you please refer to the reconstructed  
8 balance sheet for Whitewater Development Company,  
9 Inc. that we were reviewing a moment ago, which is LP  
10 01123.

11 A All right.

12 Q Would you please turn to page 1125.

13 A Yes.

14 Q In the column preSeptember 30, 1979, listed  
15 for interest expense, is an amount for \$6019.41.  
16 Could you please describe this entry for us?

17 A It says what it says.

18 Q Based on your analysis, was this the amount  
19 of interest expense paid prior to September 30, 1979  
20 on the Whitewater loans?

21 A Again, this is Mr. Weese's work product.  
22 And while I understood it at the time, I certainly

1 don't recall each and every detail. But this is what  
2 this would indicate, yes.

3 Q Now, I am wondering if you could explain to  
4 me, in your report, you note the Clintons took a  
5 reduction on their 1978 return which was clearly  
6 preSeptember 30, 1979 for \$10,131.

7 If you look at this balance sheet it  
8 appears that only \$6019.41, was paid in interest  
9 prior to September 30, 1979. I am just wondering if  
10 you could explain that difference to me.

11 A I think we need to understand something  
12 here, Counsel. If you go back to 1123, as we just  
13 went through by looking at LP 00400, we now know the  
14 components of that \$222,000. Do we not?

15 Q Yes, we do. On this document, if you then  
16 look at section -- if you will go over to LP 01124 --

17 A Yes.

18 Q -- you will see that we have identified an  
19 advance or loan from the Clintons, in the amount of  
20 \$25,762?

21 A I see that. Included in that is the  
22 \$10,131.56 that got capitalized in the land cost.

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1 The document that you referred to, which is 1125,  
2 represents other interest expense that was incurred  
3 by Whitewater.

4 Q That's fine. Thank you.

5 MR. COLE: Again, for the readers of this  
6 record who are less familiar with the details here,  
7 am I correct in understanding, Mr. Patten, that no  
8 tax consequences would have flowed to the Clintons or  
9 the McDougals because of the interest expenses that  
10 you just described?

11 THE WITNESS: That's correct.

12 MR. COLE: Thank you.

13 MR. JIAMPIETRO: There are lots of  
14 questions here that we are trying to get the answers  
15 to and I appreciate your helping us trying to arrive  
16 at those answers.

17 MR. COLE: Was that directed at me or  
18 Mr. Patten?

19 MR. JIAMPIETRO: It was directed at the  
20 record.

21 MR. HADDON: Did it answer?

22 MR. JIAMPIETRO: I think we can move on to

1 the heart of the matter which is the actual report.

2 MR. COLE: We covered the capillaries  
3 pretty thoroughly, I think.

4 BY MR. JIAMPIETRO:

5 Q Previously, Mr. Patten, I believe you  
6 stated that you did most of the writing with regard  
7 to the report, but that Mr. Weese had some input into  
8 that process; is that correct?

9 MR. JIAMPIETRO: Did you hear the  
10 question?

11 THE WITNESS: I didn't hear any question.

12 MR. JIAMPIETRO: Sorry, there must have  
13 been some sort of delay.

14 MR. HADDON: We didn't hear a question  
15 here. The last thing we heard you were going to move  
16 to the heart of the matter, the report.

17 MR. JIAMPIETRO: There must have been a  
18 break in our connection so let me go ahead and  
19 restate the question. Actually, why don't I have the  
20 court reporter restate the question.

21 (The reporter read the record as requested.)

22 THE WITNESS: And I answered that question

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1 yes.

2 BY MR. JIAMPIETRO:

3 Q So it would be fair to say that you  
4 prepared the various drafts of the report; is that  
5 correct?

6 A For the most part, yes.

7 Q I would like you to refer to LP 01108,  
8 which is a March 19, 1992 facsimile cover page to  
9 Mr. Lyons from you. Attached to that cover page is a  
10 letter to him, which I believe is a draft of the  
11 report. I would like to you review that and confirm  
12 if that is correct.

13 A That's what it appears to be.

14 Q Dated March 18, 1992?

15 A That's correct.

16 Q Is this the first draft of the report?

17 A It would appear to be, yes.

18 Q How many different drafts of the report  
19 were prepared before the final version was issued to  
20 Mr. Lyons and the Clintons?

21 A I cannot tell you. I would have to go  
22 through and conform each of these documents that run

1 from the sequence that you requested this morning to  
2 determine the specific number.

3 I would have to believe, without going  
4 through that rather intensive process, that there  
5 were three or four.

6 Q I've done that process, and does the number  
7 six sound correct to you?

8 A It may well be.

9 Q Who normally would receive copies of these  
10 drafts for review?

11 A I think, as indicated in the various  
12 documents pertaining to these "drafts," you can see  
13 that Mr. Lyons generally received it, Clinton, and  
14 then as I indicated earlier, Mr. Hamilton received a  
15 draft. And I think there may have been one that was  
16 sent to John Klursaritz and I believe also Loretta  
17 Lynch may have received a copy or copies of some or  
18 all.

19 Q Why don't I run through a couple of fax  
20 pages for you and mention some names that are listed  
21 on those fax pages of the various drafts, and we will  
22 have that on the record.

1 As I just noted, LP 0110 is a facsimile  
2 cover page dated March 19, 1992 to Mr. Lyons, with an  
3 attached draft of the report dated March 18, 1992.

4 On March 19, 1992, there is a facsimile  
5 cover page, the time listed on the cover page is  
6 9:45. The cover page is to Hillary Clinton. 55  
7 pages were faxed to Mrs. Clinton according to this  
8 cover page. That would be LP 01115. LP 0116 is a  
9 cover page to Loretta Lynch for 53 pages dated March  
10 19, 1992.

11 LP 01170 is a facsimile cover page dated  
12 March 19, 1992 of 1:05 -- I would hope that would be  
13 p.m. and not a.m., you would be working very late if  
14 it was a.m., but it is not listed whether it is a.m.  
15 or p.m. -- to James Hamilton at Swidler & Berlin.  
16 It's also attaching a March 18, 1992 draft of the  
17 report.

18 There is a March 20, 1992 facsimile cover  
19 sheet. And I should note for the record that all of  
20 these cover sheets are patent Patten, McCarthy &  
21 Associates cover sheets. And in each case, the  
22 sender is listed as Mr. Patten.



1 The March 20, 1992 facsimile cover page is  
2 to Hillary Rodham Clinton from Mr. Patten, Bates  
3 number LP 01177, attached -- following that is a  
4 facsimile cover page of the same date to John  
5 Schwartz, Esquire, from Mr. Patten, LP 01178.

6 Do you recall who Mr. Schwartz is,  
7 Mr. Patten?

8 A That's not Schwartz, that's Klursaritz.

9 Q That's Klursaritz, my error, sorry. On  
10 March 20, 1992, there is another fax cover page to  
11 James Hamilton, Esquire, from you, LP0 1179. In each  
12 case, 11 pages were faxed to these individuals on  
13 March 20, attached is a March 20, 1992 draft of the  
14 report.

15 In addition, there is another document,  
16 facsimile cover page, LP 01101, again, sent from  
17 Mr. Patten to Hillary Rodham Clinton at 2:55 on March  
18 20, 1992.

19 A Which number was that?

20 Q LP 01101. The time is 2:55 on March 20,  
21 1992 from Les Patten to Hillary Rodham Clinton, 10  
22 pages; appears to attach a March 20, 1992 draft of

1 the report.

2 March 21, 1992 facsimile cover page from  
3 Mr. Patten to Eli Segal, seven pages, appears to  
4 contain a copy of the report.

5 Mr. Patten, do you recall who Mr. Segal is?

6 A I recall that we were requested to send him  
7 a copy as well as sending Loretta Lynch a copy. I  
8 believe he was working on the campaign. I don't know  
9 him personally.

10 Q On March 21, 1992, we have a series of  
11 facsimile cover pages to Hillary Rodham Clinton, each  
12 appears to attach the report. It was sent by  
13 Mr. Patten LP 01093, March 21, 1992, at 11:40 a.m.  
14 Another facsimile transmission to Hillary Rodham  
15 Clinton from Mr. Patten on March 21, 1992 at 4:05  
16 p.m. attaching a copy of the report.

17 A third facsimile cover page on March 21,  
18 1992, to Hillary Rodham Clinton from Mr. Patten at  
19 4:35 p.m. LP 01083 appears on March 22, 1992, the  
20 report was faxed out several more times, at 4:00 p.m.  
21 to Mr. Segal, and Ms. Lynch, LP 01070.

22 Faxed again to Ms. Lynch at 4:40 p.m., LP

1 01064. And faxed to Mrs. Hillary Rodham Clinton from  
2 Mr. Patten again, at 5:05 p.m. on March 22, 1991 LP  
3 01058. On March 23rd, 1992, at 1:40 p.m., we have  
4 another fax from Mr. Patten to Mrs. Clinton, LP 01051  
5 at 1:40 on March 23rd, 1992.

6 Does that appear to cover most of the  
7 people to whom you would have faxed the report,  
8 Mr. Patten?

9 A It would appear so to me.

10 Q Do you know whether you fashioned the  
11 report to anyone else?

12 A I am certainly not aware of it.

13 Q Were changes made to the drafts of your  
14 report based on the comments of persons associated  
15 with the Clinton Presidential campaign?

16 A Changes were made based on my continuing  
17 review and the work that we were doing right up to  
18 the very last minute. Obviously there were comments  
19 offered by various people who got copies of it, but I  
20 cannot represent to you that all those comments ever  
21 got incorporated into the final work product.

22 Q Did Mrs. Clinton ever make comments on the

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1 report, drafts of the report, prior to the  
2 preparation of the final version?

3 A I said to you earlier today I only had one  
4 conversation with Mrs. Clinton regarding the items I  
5 identified. I never had any input from Mrs. Clinton  
6 with regard to the content of the report.

7 Q With Governor Clinton?

8 A No, sir.

9 Q Did any comments by any persons associated  
10 with the Clinton Presidential campaign get included  
11 in the report?

12 A I said I cannot tell you what comments may  
13 or may not have been incorporated. In my view, those  
14 comments would have been matters of form only, or  
15 what I characterize as wordsmithing and nothing of  
16 substance. Most of the comments I obtained I  
17 obtained from Mr. Lyons, and they again were in the  
18 same genre of comments.

19 MR. COLE: We won't tell him that you  
20 characterized them that way, Mr. Patten.

21 BY MR. JIAMPIETRO:

22 Q So let me see if I understand this. On

1 March 19, 1992, you faxed off a draft of the report  
2 to Mr. Lyons which was dated March 18, 1992, which  
3 you've previously testified appears to be the initial  
4 draft of the report.

5 A I'm sorry, give me that Bates number again.

6 Q LP 01109.

7 A All right.

8 Q Between March 18, 1992, and March 23rd,  
9 1992, this report was faxed at least some 16 times,  
10 based on the fax cover sheets that we previously read  
11 into the record, to various members of the Clinton  
12 Presidential campaign. Does that -- is that correct,  
13 based on your knowledge of this time period?

14 A Did I not make a count? If you will  
15 represent to me your count is accurate, I will accept  
16 it.

17 Q That's the count I made from the various  
18 reports contained in your production.

19 Now, in a moment, I am going to go through  
20 some of the changes in the various drafts of the  
21 report, but I just wanted to ask you, from the  
22 initial draft of the report prepared on or about

1 March 18 or 19, 1992, to March 23rd, 1992, were any  
2 substantive changes made in the report?

3 A Well, we will have to debate the word  
4 "substantive," I suppose. But as I review these two  
5 reports, I think that all of the issues that we  
6 identified in the document that starts with Bates  
7 number 00105 which the final work product were  
8 also -- many of them were reflected in the draft that  
9 you are referring to which starts with Bates number  
10 LP 01109.

11 It appears that we have expanded our  
12 description of the background, which I took upon  
13 myself to make sure that we had a more complete  
14 description of the history of this, which we did not  
15 have in the initial document.

16 Q Well, in a moment I am going to go through  
17 various changes in this report. But first let me ask  
18 you, when was the final version or versions of the  
19 report prepared by your firm? Take a moment to  
20 review the documents you have, if you need to.

21 A It is my best recollection, I finalized  
22 this either late Sunday night, March 22, or more

1 correctly, I believe I went in and finalized it the  
2 morning of March 23rd.

3 Q How many different final versions of the  
4 report were prepared by your firm?

5 A I don't understand the question.

6 Q Did you just have one signed version of the  
7 report which you prepared, or were there a number of  
8 signed versions of the final report which you  
9 prepared?

10 MR. HADDON: Different versions of the  
11 final report?

12 MR. JIAMPIETRO: Different versions of the  
13 final report.

14 BY MR. JIAMPIETRO:

15 Q Was there a summary version of the final  
16 report and a more complete version of the final  
17 report?

18 A As noted in the document that is the final  
19 as you have referred to it, report at LP 00105, I  
20 have provided a summary report to the Clintons and  
21 that summary report is LP 00115.

22 MR. COLE: So the short answer is,

1 Mr. Patten, that you prepared one report and a  
2 summary of that report; is that a fair  
3 characterization?

4 THE WITNESS: Yes, it is.

5 BY MR. JIAMPIETRO:

6 Q Did you send both versions of the report to  
7 the Clintons?

8 A No, sir.

9 Q To whom did you send both versions of the  
10 report?

11 A Mr. Lyons is the only individual that  
12 received both versions of the report.

13 MR. COLE: This is Lance Cole, Mr. Patten.  
14 One question that I don't think Mr. Jiampietro has  
15 asked you that I would like to raise at this time,  
16 who did you regard as your client for purposes of  
17 this engagement?

18 THE WITNESS: For purposes of this  
19 engagement, I had been retained by Mr. Lyons who was  
20 obviously working for the campaign. I regarded the  
21 Clintons as my client, however.

22 MR. COLE: Thank you.



1 BY MR. JIAMPIETRO:

2 Q I would like to walk you through some  
3 changes in the various versions of the report that  
4 were prepared between March 19, 1992, and March 23rd,  
5 1992, that four-day date-and-time span and ask you  
6 the significance of some of the changes. This may be  
7 difficult. I don't know if you have the reports  
8 segregated out or if they are all in one pile. And  
9 if we -- let me --

10 A I have them in one pile in Bates number  
11 order.

12 Q This may take a little while, but maybe if  
13 I identify each -- let's start with -- I appreciate  
14 your patience on this. It is difficult to go through  
15 all of these reports.

16 THE WITNESS: Can we take a break?

17 BY MR. JIAMPIETRO:

18 Q Let me get started on this. As I  
19 understand it, as you look at the March 18, 1992  
20 report LP 01109, if you'll just refresh your memory  
21 as to that report, because I think this version of  
22 the report basically stays the same for a couple of

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1 days. Let me know when you are ready to answer some  
2 questions on this report, please.

3 A Go ahead.

4 Q At this point in time, on March 18, 1992,  
5 was it your belief that this version of the report  
6 was an accurate and complete representation of the  
7 analysis undertaken by your firm?

8 A Well, it certainly represented the work  
9 that we had done to date.

10 Q Just to place in it perspective, you would  
11 have -- maybe you can place it in perspective for  
12 me.

13 This initial draft, what we are calling the  
14 initial draft, dated March 18, 1992, can you place it  
15 within the two-week time span that you have given us  
16 previously as the time period which your firm worked  
17 on this project? Can you place it within that  
18 two-week period when this initial draft would have  
19 been prepared?

20 A I will have to refer to my billing records.

21 Q That's fine. Please take your time.

22 A My records indicate that the first time

1 charge was on March 10th, 1992. This will be  
2 approximately eight days after that.

3 Q Based on my analysis of the various drafts  
4 of the report -- and I certainly would appreciate it  
5 if you review each draft as I mention the Bates stamp  
6 number -- the March 18 report was sent to Mr. Lyons  
7 on March 19, 1992. That's the report we have been  
8 looking at Bates stamped LP 01109. The same version  
9 of the report without any changes, as I understand  
10 it, to the text of the report -- mind you, I haven't  
11 had a chance to go through all of the exhibits -- was  
12 sent to Hillary Clinton on March 19, 1992, that's  
13 Bates stamped LP 01117. It was also sent --

14 THE WITNESS: Excuse me. The copy of the  
15 draft report starts at Bates number LP 001181.

16 MR. JIAMPIETRO: Actually, according to my  
17 records -- and let me just preface this by saying  
18 that the documents don't appear to have gone in  
19 chronological order in the production to us, so they  
20 have to have been -- we have done some reshuffling to  
21 get them in the chronological order as they may have  
22 been sent out to the various persons.

1 BY MR. JIAMPIETRO:

2 Q The document that I am next looking at  
3 after the version which we have been reviewing, LP  
4 01109, I then shift to LP 01115.

5 A Okay. But you gave me a number of 1177.

6 Q Actually it was 1117, so it is 17, not 71.

7 A Excuse me. All right.

8 Q That version of the report which I did not  
9 find any substantive changes in that version of the  
10 report from the one September to Mr. Lyons was sent  
11 to Hillary Clinton and Loretta Lynch on March 19?

12 A Right.

13 Q LP 1117 appears, this version of the report  
14 does not have any substantive changes from the  
15 earlier versions of the report, and it was sent to  
16 Mr. Hamilton on March 19.

17 The first version that I see with what  
18 appear to be significant changes is at LP 01181, and  
19 I would like to ask you, if you would, to also pull  
20 the version of the report, which is at LP 01102.

21 A All right.

22 Q Immediately preceding each of these

1 versions of the report in your production are fax  
2 cover pages to Hillary Rodham Clinton from yourself.  
3 Both fax cover pages are marked March 20, 1992.

4 A All right.

5 Q One does not have a time listed and one has  
6 a time of 2:55 listed.

7 A All right.

8 Q Based on your memory of this time period,  
9 can you place in chronological order these two  
10 versions of the report?

11 A No way.

12 Q Okay, let's look at them page by page.

13 MR. JIAMPIETRO: Let's go off the record  
14 for a minute.

15 (Discussion off the record.)

16 BY MR. JIAMPIETRO:

17 Q I want to refer you to the document Bates  
18 stamped LP 01181 which is a March 20, 1992 letter,  
19 draft letter from Mr. Weese and Mr. Patten to  
20 Governor and Mrs. Clinton stamped "draft" across the  
21 top. This version of the report was transmitted,  
22 based on facsimile cover pages, to three persons on

1 March 20th, Mrs. Clinton, John Klursaritz and James  
2 Hamilton.

3 I would also like to refer you to the  
4 document Bates stamped LP 01102, which is the first  
5 page of a version of report, dated March 20, 1992.  
6 It is in the form of a letter from Mr. Weese and  
7 Mr. Patten to Governor and Mrs. Clinton. This one  
8 does not have a draft stamp and it is signed by both  
9 Mr. Weese and Mr. Patten. This version, according to  
10 facsimile cover page, was sent to Mrs. Clinton on  
11 March 20, 1992.

12 Can you take a moment to review those  
13 documents, please.

14 A All right.

15 Q I will refer you to some specific passages  
16 in both versions of the report, but I have some  
17 general questions to ask you regarding both of them.

18 A All right.

19 Q The first question is, were both of these  
20 reports sent to Mrs. Clinton?

21 A That's what the cover sheets indicate.

22 Q Would the version marked "draft" have been

1 sent prior to the signed version?

2 A I believe it was.

3 Q The signed version that you sent to  
4 Mrs. Clinton deletes the draft stamp and has your  
5 signatures on it. Was it your intent that this was  
6 to be a final version of the report?

7 A Based on my understanding, the substance of  
8 the report was pretty much final at that point. I  
9 think we were premature in signing it because we had  
10 not obtained everybody's comments.

11 (Pause.)

12 THE WITNESS: Hello.

13 BY MR. JIAMPINETRO:

14 Q I am here. I am just thinking.

15 From this point on, substantial changes  
16 occur in the versions of the reports that are  
17 transmitted from you to various members of the  
18 campaign. Was there a discussion on March 20, 1992,  
19 or the following day, March 21, regarding whether or  
20 not any changes would have to be made in the form of  
21 the report, between yourself and any members of the  
22 Clinton Presidential campaign?

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1 A It's at this approximate point this time  
2 when Mr. Lyons advised me that he wanted a summary  
3 report prepared, and to the extent that you referred  
4 to substantive changes, I think those substantive  
5 changes are as a result of attempting to prepare a  
6 summary report.

7 Q What I would like to do, before we start  
8 going into the substantive or the changes in the  
9 various reports, is get an understanding from you of  
10 this decisionmaking process to produce a summary  
11 report. Can you explain to us the substance of the  
12 discussions between yourself and Mr. Lyons, regarding  
13 the decision to produce a summary report?

14 A I can't recall the substance of it. The  
15 essence of it was that Mr. Lyons indicated that he  
16 will like to have a summary report in addition to the  
17 full report which would be addressed to him.

18 Q Was there ever a discussion of the purpose  
19 to which the summary report would be put?

20 A My understanding was that the purpose of  
21 the summary report was to address two or three  
22 specific questions that had been raised by the



1 press.

2 Q At this point in time, on March 20th and  
3 21, was there ever a discussion that the more  
4 complete version of the report would be kept  
5 confidential, and that the summary version of the  
6 report would be released to the public?

7 A Both the summary version and the complete  
8 version were subject to confidentiality and with an  
9 accountant/client privilege, and it so indicates.

10 MR. COLE: For people who read this record  
11 and may not be aware of that, under Colorado state  
12 law there is a recognized accountant/client  
13 privilege; is there not, Mr. Patten?

14 THE WITNESS: Yes, there is.

15 MR. COLE: Thank you.

16 BY MR. JIAMPIETRO:

17 Q Once again, at this specific point in time,  
18 did you have any discussions with persons, other than  
19 Mr. Lyons, regarding the preparation of two different  
20 versions of the report?

21 A No, sir.

22 Q Over the next several days, as the summary

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1 version of the report was prepared, did you discuss  
2 it with any other persons from the Clinton  
3 Presidential campaign?

4 A Not that I recall.

5 Q Okay. Why don't we go over some of the  
6 specific changes, and I would like to just get your  
7 understanding of why certain things were taken out  
8 and why other things were added, and whether or not  
9 those changes were made on your initiative, or if  
10 not, if you could let us know at whose initiative the  
11 changes were made, I would appreciate it.

12 Starting with page Bates stamped LP  
13 01182 --

14 A Yes.

15 Q -- if you could compare that with page LP  
16 01103.

17 A Okay.

18 Q The third full paragraph down on the second  
19 page of the March 20th version of the report, the  
20 last sentence on 01182 in that third full paragraph  
21 reads: "At the present time WDC continues to receive  
22 income from five lots through escrow contracts,

1 certain property taxes appear to be unpaid, and  
2 franchise fees may also be in arrears."

3 That sentence appears to be deleted from  
4 the page LP 01103. I was wondering if you could  
5 describe to us why that change was made, if you can.

6 A I can't recall with specificity but one of  
7 two things occurred and I don't recall which. I  
8 believe Mr. Weese may have identified a canceled  
9 check that in fact went to pay the franchise taxes,  
10 or I was advised and provided that information by  
11 Mr. Lyons, that the franchise taxes had in fact been  
12 paid by Mrs. Clinton.

13 MR. COLE: Did you say by "Mrs. Clinton,"  
14 Mr. Patten?

15 THE WITNESS: Yes.

16 MR. COLE: Thank you.

17 BY MR. JIAMPIETRO:

18 Q Let's move on to the fourth page of the  
19 draft report, LP 01184, on March 20th, 1992 and  
20 compare that with the fourth page of the signed  
21 version of the March 20, 1992 report. I have a  
22 couple of questions regarding this page. In point --

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1 let me just briefly note with regard to both of these  
2 reports, that they're both seven pages in length.  
3 They contain a section on background, available  
4 records, analyses and reconstructions, and  
5 observations.

6 There are two pages -- correction, three  
7 pages of observations in both versions of the  
8 report. There are nine specific points in the  
9 section on observations.

10 In point number 1 of the signed version,  
11 the first sentence reads "As of May 31, 1991 the  
12 Clintons have provided funds to WDC and the McDougals  
13 in the amount of approximately \$79,900 since 1978,  
14 which includes \$2839 in accounting fees paid by  
15 Hillary Clinton in 1991."

16 Two questions on this sentence, first, the  
17 amount appears to increase from the draft to the  
18 signed version, from \$77,100 in the draft version to  
19 \$79,900 in the signed version, because of the  
20 addition of these accounting fees; is that your  
21 understanding?

22 A Yes, sir.

1 Q Who brought this change to your attention?

2 A Again, I think it was either through  
3 Mr. Lyons or Mr. Weese may have had some additional  
4 work that he was doing that caused him to identify  
5 this. I don't really recall which happened.

6 Q In addition, in the third point on that  
7 page on the signed version, middle of the way through  
8 this paragraph, it reads -- and I am just going to  
9 briefly describe this point.

10 It is point 3 and it appears to relate to  
11 lot 13 and a loan taken out by Mrs. Clinton in the  
12 amount of \$30,000 from Madison Bank & Trust. It  
13 describes certain deductions taken by the Clintons in  
14 1984 and '85 on their personal tax returns that may  
15 have been also deducted by Whitewater Development  
16 Corporation on its corporate tax returns in 1985 and  
17 '86.

18 Is that a correct description of this  
19 point?

20 A Yes.

21 Q There is a sentence in the point which  
22 reads "thus it appears that the Clintons's interest

1 deductions were in error and a marginal tax benefit  
2 may have been realized in the amount of \$2156."

3 The notation in the marginal tax benefit  
4 was added from the draft version. Was it your  
5 decision to add that?

6 A That's my recollection, it was, yes.

7 Q In going through each of the changes here,  
8 there are a number of changes in some of the numbers  
9 and some slight changes in the analysis and I don't  
10 want to go through each of those. In terms of  
11 efficiency, can you briefly describe the process of  
12 the changes that were made to the signed version, and  
13 who would have suggested those changes?

14 A Mr. Weese and I were continuing to do our  
15 analysis as we were, at the same time, drafting. It  
16 is clear to me the result of that process resulted in  
17 the changes.

18 Q Now, I would like to switch from --

19 A And I want to point out to you, just for  
20 clarification of the record here, as I am looking at  
21 this, while it is true that we reformatted the Bates  
22 number -- the report Bates numbered 1102, and you

1 just referenced the addition of the marginal tax  
2 benefit that was also previously included in the  
3 prior draft report on page 5 at 4.C.

4 What happened here is that there was a  
5 similar reformatting of some of our points for  
6 clarity in this presentation.

7 Q Great. I think there are, in those two  
8 versions of the report, the changes are primarily in  
9 formatting and are quite minor in nature. The first  
10 significant changes that one can see in the versions  
11 of the reports are in the document which -- the  
12 signed version that we were just reviewing, 01102,  
13 and the version at 01076.

14 The version at 01076 is a signed version,  
15 of the report, from Mr. Weese and Mr. Patten, to  
16 Governor Clinton and Mrs. Clinton dated March 21,  
17 1992.

18 This later version of the report contains  
19 significant changes from the March 20th signed  
20 version of the report. It was faxed on March 21, to  
21 Mr. Segal, Hillary Rodham Clinton; faxed to  
22 Mrs. Clinton twice, once at 11:40 a.m. and 4:05 p.m.

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1 If you'll take a moment to review the March 21 signed  
2 version.

3 A I have it.

4 Q Was it your understanding now that this  
5 would be the final version of the report since it's  
6 signed?

7 A As I think I testified a few moments ago,  
8 it was at this juncture that I was requested to  
9 prepare a summary report. It was my understanding at  
10 this time -- and again I may have been premature in  
11 executing a signature on it because I had not gotten  
12 everybody's comments back -- that this summary  
13 version, to the extent that it is different from the  
14 version that you referenced at Bates number LP 01102,  
15 simply reflects the fact that this is the first  
16 summary report.

17 Q Exactly. We have a lengthy report dated  
18 March 20, 1992, which is signed by you and Mr.  
19 Weese. Then we have a much shorter version of the  
20 report which is signed by you and Mr. Weese dated  
21 March 21, 1992. And as you just noted, you signed  
22 this version prior to getting comments from all



1 parties concerned; is that correct?

2 A That's right.

3 Q The parties that would have been giving you  
4 comments on this, you've testified previously that  
5 Mrs. Clinton only had one conversation with you, so  
6 is it correct that you would not have been getting  
7 comments directly back from Mrs. Clinton?

8 A That's correct.

9 Q Who primarily would have been giving you  
10 comments on the various versions of the report?

11 A Those comments came from Mr. Lyons.

12 Q Only Mr. Lyons?

13 A I don't recall receiving comments from  
14 anybody else.

15 Q Did Mr. Lyons tell you that he had  
16 discussed any of these comments with other people?

17 A I don't know if he had or not. Now, when I  
18 say that I don't recall having comments from anybody  
19 else, you know, that's not to say that maybe  
20 Mr. Weese didn't have a conversation with Loretta  
21 Lynch, but I just don't recall any substantive  
22 comments coming from other parties.

1 Q That's a good point, actually.

2 Who would have compiled the various  
3 comments from other persons? Would that have been  
4 you or Mr. Weese?

5 A Well, to the extent that we got comments --  
6 and I am having trouble with the word "compiled,"  
7 this was a fairly fluid process we were involved in,  
8 and we may have made notes or something like that.  
9 But I don't think there was a formal compilation  
10 process.

11 Q But from what you just said, Mr. Weese may  
12 have received comments from certain persons and you  
13 may have received comments from other persons?

14 A That could have happened. I don't know.

15 Q But Mr. Weese certainly had some input into  
16 the various versions of the report that were being  
17 prepared?

18 A Absolutely.

19 Q I think, once again for the record, so  
20 anybody who reads this transcript understands,  
21 Mr. Weese is unavailable for our deposition, that's  
22 why I am asking you, to the best of your

1 recollection, to try to recreate what he may have  
2 known at this time and done at this time because he,  
3 I understand, has passed away; is that correct?

4 A That's correct.

5 Q And I appreciate your efforts in trying to  
6 recollect what he may have done.

7 Turning to the various versions of this  
8 report, maybe it is best first to just let you  
9 describe in general how this initial cut at preparing  
10 the summary was done and why certain things were left  
11 out, if you could do that. I think that's probably  
12 the easiest and most efficient way to go through  
13 this.

14 A Well, as I have already stated, the  
15 reason -- the summary report was addressing specific  
16 questions that had been raised during the course of  
17 the campaign and that -- the specific questions were  
18 essentially what was the financial condition of  
19 Whitewater Development Company; what had been the  
20 investment by the respective parties in Whitewater.  
21 And the purpose of the summary report was to address  
22 those specific issues.

1 Q Just briefly, based on my analysis, this  
2 first cut at the summary that was done on March 21,  
3 it contains four observations, numbered 1 through 4,  
4 whereas the March 20th longer version contained nine  
5 observations. The observations listed on the shorter  
6 version --

7 A I would like to correct you. The longer  
8 version contains five observations.

9 Q There is 4A and 4B?

10 A That is correct, there are 4A and 4B.

11 Q And each of these observations in the  
12 shorter version were contained in the longer version;  
13 is that correct, based on your review of the  
14 document?

15 A One moment, please.

16 Q I am comparing the summary version to the  
17 longer version, and as I understand it from my  
18 reading of both versions of this report, each of the  
19 four points made in your observations on the summary  
20 report were contained in the longer version of report  
21 dated March 20th. It is just that some points were  
22 deleted.

1 A Okay.

2 Q Is that correct based on your review of the  
3 reports?

4 A I am trying to establish, when you refer to  
5 the longer version, which Bates number you are  
6 referring to.

7 Q Certainly, it is the signed version at LP  
8 01102.

9 A Right.

10 Q That is my comparison. The page changes I  
11 see in this are that the background section is taken  
12 out, the available records section is summarized, the  
13 analyses and reconstruction section is deleted, and  
14 then the observations are basically pared down from  
15 nine to four, with point 4 having A and B.

16 A All right.

17 Q I just want to ask you why certain points  
18 may have been deleted in the observations section.  
19 Referring to Bates stamped LP 01106, which is page 5  
20 of the longer signed version, this is the point which  
21 references the \$10,131 interest deduction taken by  
22 the Clintons in 1978.

1 A Yes.

2 Q This section was deleted from the summary  
3 version?

4 A Yes.

5 Q Can you explain the reasoning behind that  
6 deletion to us?

7 A I don't have a specific recollection, but  
8 you know, certainly looking at it today, this really  
9 didn't impact the issues that we were attempting to  
10 address in the summary report. In fact, it is simply  
11 part of the money ascribed to the Clintons in any  
12 event.

13 Q Was part of your purpose of the report to  
14 point out possible tax issues relating to Whitewater?

15 A We certainly considered the tax issues from  
16 the Whitewater perspective. I would not say that it  
17 was the purpose of the report to analyze each and  
18 every tax issue as it pertains to the Clintons. We  
19 were attempting to understand how much money they had  
20 invested and in what form they had invested it.

21 Q But isn't it true that, if you look at the  
22 longer version of the report, there appears to be

1 from reading it a rather complete discussion of  
2 issues relating to the Clintons's treatment of  
3 Whitewater interest deductions, the propriety of  
4 those interest deductions, and even some of those  
5 points are included in the summary version?

6 For instance, if you look at points 4B and  
7 4A -- I am just trying to distinguish between points  
8 4A and B in the summary version and point 4 in the  
9 longer version.

10 MR. COLE: For the record, I would like to  
11 note the statement rather completely represents Mr.  
12 Jiampietro's opinion and nothing more.

13 BY MR. JIAMPIETRO:

14 Q I was just wondering if you could explain  
15 why 4A and B were included in the summary version and  
16 point 4 from the longer version regarding the 1978  
17 interest deduction was deleted, if you have a  
18 recollection?

19 A As I said, I don't have a specific  
20 recollection, from our perspective, this issue was  
21 not significant in relation to the purpose of the  
22 summary report. Secondly, the dollar amount

1 referenced there is already included in the amount we  
2 have ascribed to the Clintons as contained in the  
3 summary report.

4 Q Let's move on and compare the March 21  
5 summary version of the report -- if we could then  
6 move to document Bates stamped LP 01071. What I  
7 would like to do is briefly describe this document.  
8 This document is also dated March 21, 1992. It  
9 was -- it is in the form of a letter from Mr. Weese  
10 and Mr. Patten to Governor and Mrs. Clinton. This  
11 version is not signed by Mr. Weese and Mr. Patten.

12 It was faxed to Mr. Segal and Ms. Lynch on  
13 May 22, 1992, the day after the version we were just  
14 reviewing, the summary version we were reviewing,  
15 dated March 21, that was signed by both Mr. Patten  
16 and Mr. Weese. It was faxed to Mr. Segal and it was  
17 again faxed to Mr. Segal on the second day and I  
18 would like to review this version.

19 A All right.

20 Q Compare this.

21 A To what?

22 Q Compare the unsigned version of the report



1 at LP 01071, which was sent out on March 22, 1992 to  
2 Mr. Segal, to the signed version of the summary  
3 report at LP 0107 which was sent to Mr. Segal on  
4 March 21, 1992.

5 As I understand it, there are really just  
6 two substantive changes as I see them on this latter  
7 version, the unsigned version. On page 3, points 3  
8 and 4 of the observations, in point 3, the last  
9 sentence -- hang on a second here.

10 Which page are we on, LP 01073?

11 A I don't know. Which page are we on?

12 MR. JIAMPIETRO: Off the record for a  
13 minute.

14 (Discussion off the record.)

15 MR. JIAMPIETRO: Back on the record.

16 BY MR. JIAMPIETRO:

17 Q If you look at point 3 on page 3 of the  
18 unsigned version, a sentence is deleted from the  
19 previous day's version. It reads, "moreover as  
20 reflected on page 1 of Exhibit A, as of the end of  
21 each fiscal year for the period May 31, 1980 through  
22 1985, the contributions by the Clintons exceeded the

1 net contributions of the McDougals."

2 That sentence is deleted from the latter  
3 version of the report. Do you have any recollection  
4 as to why this change was made?

5 A I have no recollection of it. I mean, the  
6 document speaks for itself, the attachments speak to  
7 the issue of what the relative contributions were. I  
8 have no idea.

9 Q Let's just move on to the next change.  
10 Point 4A, is also deleted from the latter version,  
11 the unsigned version of the report. Point 4A  
12 referred to an interest deduction taken by the  
13 Clintons in the amount of \$2900 on their 1979  
14 personal tax return. Now, that point is deleted in  
15 the latter version of the report. Do you have any  
16 recollection as to why that point was deleted?

17 A Yes, sir.

18 Q Please explain it to us.

19 A Again, as we were trying to get the summary  
20 report in a form that was oriented towards the  
21 questions that have been asked --

22 Q By the press; right?

1 A Whoever, yes, that, and looking at the 4A  
2 in the previous version, it was an item that we had  
3 no certainty about. We thought it would be  
4 inappropriate to include that in the summary report.

5 With respect to 4B, we had certainty about  
6 that. And that's the reason we deleted 4A.

7 Q Now, I'm not trying to trick you here. I  
8 just want to understand this.

9 You, on March 20th, signed a long version  
10 of the report which contained this point. At some  
11 point after that, you received information which made  
12 you uncertain as to the validity of this point; is  
13 that correct?

14 A No.

15 Q Could you please explain the change from  
16 March 20 to March 22 as to the issue of uncertainty  
17 on this point arising?

18 A There was a change in information. The  
19 fact that, in the longer version of the report that  
20 we had identified it, it was an item that we raised  
21 as a potential issue, but we had no certain  
22 conclusion as to the issue.

1 As we went through this process and as we  
2 arrived at the summary version, starting at 1071, it  
3 was my opinion that it would be inappropriate to put  
4 things in that we were not certain with respect to  
5 the tax implications as it may pertain to the  
6 Clintons.

7 Q And that was your judgment; is that  
8 correct?

9 A Yes, sir.

10 MR. COLE: And no one directed to you do  
11 that or to make that judgment; am I understanding you  
12 correctly on that point, Mr. Patten?

13 THE WITNESS: That's correct. As we were  
14 continuing along in this process, as I stated several  
15 times before, we were still continuing our analysis  
16 and challenging our conclusions.

17 MR. COLE: So it was your independent  
18 professional judgment that it was preferable not to  
19 include that language?

20 THE WITNESS: That's correct.

21 MR. COLE: Thank you.

22 MR. JIAMPIETRO: I would like to note for

1 the record the thing that I am trying to understand  
2 is that you had signed a version of the report,  
3 several versions of the report, which contained that  
4 point, including an initial summary version of the  
5 report which contained that point after learning of  
6 the change -- you were preparing the summary report,  
7 but then you continued to whittle away at certain of  
8 the point.

9 And I am just trying to understand why some  
10 of those points were removed after you had signed the  
11 report apparently in its final version.

12 THE WITNESS: As I've indicated, this was  
13 fairly fluid at the time and frankly, I had been  
14 premature in signing several of the earlier versions  
15 before getting all the comments back.

16 As this process was going on, Mr. Weese and  
17 I were continuing to analyze the information included  
18 here and challenge our own conclusions.

19 MR. COLE: Mr. Patten, I don't think we  
20 have this in the record, but am I correct in  
21 understanding that, at the time, because of the  
22 issues that have been raised in connection with the

1 Presidential campaign, that there was a great deal of  
2 interest in Whitewater and that presumably you and  
3 Mr. Lyons felt that you were under certain time  
4 pressures and constraints in completing your work?

5 THE WITNESS: That's an understatement.

6 MR. COLE: I think that's important, as we  
7 look in context at the drafts of these reports, and  
8 the fact that you indicated you may have signed them  
9 prematurely, the context of what, if anything, is  
10 going on at that time with regard to the Presidential  
11 election and the enormous public attention is  
12 important. And I think it helps explain what  
13 happened.

14 BY MR. JIAMPIETRO:

15 Q That's pretty much the major changes I  
16 wanted to review. I just wanted to confirm with you  
17 one thing. There is a document Bates stamped LP  
18 01052, which is a March 23rd, 1992 cover letter from  
19 Mr. Patten to Governor and Mrs. Clinton. And I would  
20 like to confirm that that was the final version of  
21 the summary report that was sent to the Clintons; is  
22 that correct?

1 A Just a moment.

2 Q Sure.

3 A That's correct.

4 Q All right, just a couple more questions.

5 Would you please refer to LP 00014, and 15. This is  
6 a memorandum from Mr. Patten to Mr. Lyons dated  
7 November 4, 1993, regarding Whitewater  
8 reconstruction.

9 A Yes.

10 Q Are those your initials on the memorandum?

11 A That's my first name, or what I go by, as  
12 Les.

13 Q Could you briefly describe the  
14 circumstances surrounding your sending the memorandum  
15 to Mr. Lyons?

16 A To the best of my recollection, I believe  
17 that during the September/October 1993 time frame,  
18 Whitewater again became a subject of press inquiry.  
19 Obviously more than a year and a half had passed  
20 since we'd prepared our report. Mr. Lyons asked me  
21 to provide him with a summary of our methodology for  
22 his reference. And that's the purpose of this

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1 document.

2 Q Could you summarize, to the best of your  
3 ability, the contents of the memo?

4 A I think the memo speaks for itself.

5 Q I am just trying to do it for a complete  
6 record. I will read in it if you would like me to.

7 A No, I mean, there's four -- three points  
8 and a summary paragraph, I believe. On the first  
9 page, the first point indicates that this was a  
10 consulting project, and that was not any kind of an  
11 "attest" as that term is used within the accounting  
12 profession, and that we had to in fact attempt to  
13 reconstruct financial statements; there was nothing  
14 to attest to.

15 Secondly, we indicate that the source  
16 document was not available in many instances and that  
17 we had to rely on whatever we could including the  
18 accountant's work papers and correspondence and tax  
19 returns. We identified that in point 3, balance  
20 sheets that we had prepared and attached to our  
21 report, certain things that were not on the  
22 accountant work papers or the tax returns. And the



1 reason we had done that was to attempt to show as  
2 complete a picture as possible.

3 Finally, on the second page we summarize  
4 that the assigned task was to understand what moneys  
5 had been invested by the various parties to this  
6 business venture, what moneys had been received by  
7 the parties, and whether or not the business venture  
8 made any money.

9 Q Were you asked to prepare this document?

10 A I think I just indicated to you that I  
11 prepared it at the request of Mr. Lyons.

12 Q Did you know why Mr. Lyons needed the memo?

13 MR. COLE: I think he just testified to  
14 that, too.

15 THE WITNESS: As I said, a year and a half  
16 had passed and Mr. Lyons simply wanted me to, in a  
17 very concise form, provide him with a reference as to  
18 what had been done.

19 BY MR. JIAMPIETRO:

20 Q Is it wrong to characterize this memo as  
21 highlighting the difficulties that you encountered in  
22 preparing a report?

1 A I think it certainly identifies the  
2 incomplete, and lack of, documentation in certain  
3 instances.

4 Q That's fine. One last question regarding  
5 this document. There is a facsimile recover page at  
6 LP 00013 --

7 A Yes.

8 Q -- from a -- I am not sure who that sender  
9 is if you maybe could read the sender's name for me?

10 A Yes. It is Maryann Beausoleil.

11 Q Could you please describe who she is?

12 A She was an employee of our firm at that  
13 time.

14 Q And the fax was sent to Donna Mather. Do  
15 you know who Donna Mather is?

16 A Yes.

17 Q Please tell us.

18 A She is Mr. Lyons's secretary.

19 MR. JIAMPIETRO: Off the record for a  
20 moment.

21 (Discussion off the record.)

22 MR. JIAMPIETRO: On the record.

1 BY MR. JIAMPIETRO:

2 Q I would like you to refer to a letter from  
3 James M. Lyons to David Kendall, dated March 22,  
4 1994, which I believe you have a copy of; is that  
5 correct?

6 A That's correct.

7 Q For the record, a copy of this letter was  
8 produced to the Special Committee by James Lyons,  
9 Bates number JML 2584. Mr. Patten, did you ever come  
10 to see this letter?

11 A Yes.

12 Q Could you please describe the circumstances  
13 by which you came to see this letter?

14 A It was, I believe, faxed to me by --  
15 actually an earlier version -- not earlier version,  
16 but the day before, I had seen a draft of this  
17 letter, and it was faxed to me. And then I believe  
18 that Mr. Lyons provided me with a final copy.

19 Q The letter dated March 22, 1994 goes on to  
20 discuss the inclusion in your calculation of the  
21 Clintons's investment in the Whitewater investment,  
22 of an amount of \$22,244.65; and notes that this

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1 amount was not used by the Clintons in their  
2 Whitewater investment, but was rather used by  
3 Mr. Clinton to purchase a house for his mother; and  
4 that it was improperly included in the total amount  
5 that you had included in your report, which was  
6 \$68,382; and that that amount should actually be  
7 reduced by 22,244.65 which was the amount which  
8 toward the Clintons' purchase of a house for his  
9 mother; and that the actual amount by the Clintons  
10 put towards the Whitewater investment was  
11 \$46,635.75.

12 Is that a correct description of this  
13 letter?

14 A Yes.

15 Q Would you agree that the amount that should  
16 have been included in your report, if you had known  
17 this information which you didn't at the time, should  
18 have been this \$46,635.75.

19 A I don't agree with your number. It says  
20 46,665.42.

21 Q The last sentence in the first partial  
22 paragraph reads "the unreturned investment made by

1 the Clintons in Whitewater through fiscal year end  
2 1991 should be reduced accordingly to \$46,635.75."

3 A The copy I have in front of me says  
4 \$46,655.42.

5 Q Is your version signed as well?

6 A Yes.

7 Q We have two different signed versions of  
8 the same letter then, but can we agree that it was  
9 \$46,600, plus or minus some money?

10 A Yes, we can.

11 Q Great. I would like you to refer to  
12 document Bates stamped LP 00030, which I will briefly  
13 describe for the record while you obtain it. It is  
14 an April --

15 A I have it.

16 Q It is an April 16, 1992 letter from  
17 Mr. Lyons to David Watkins. And I will read the  
18 substance of the letter. "I am informed by Jim  
19 Hamilton, our FEC disclosure counsel and adviser,  
20 that the Patten, McCarthy & Associates' fees are  
21 appropriately paid as a campaign expense. Jim is  
22 sending me a formal opinion shortly which I will

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1 forward to you for your file. In the interim, I  
2 would appreciate it if you would see that the Patten,  
3 McCarthy statement is processed and paid as soon as  
4 possible."

5 Were you in fact paid by the Clinton  
6 campaign?

7 A Yes.

8 Q Were your bills paid in full?

9 A Yes.

10 Q Did you perform any further services for  
11 the Clintons or the Clinton campaign or the White  
12 House after the report was prepared, with regard to  
13 Whitewater Development Corporation?

14 A I need to confer with counsel because I am  
15 not sure I understand your question.

16 MR. JIAMPIETRO: Sure.

17 (Witness conferred with counsel.)

18 MR. HADDON: We will go outside and go off  
19 the record.

20 MR. JIAMPIETRO: Off the record.

21 (Discussion off the record.)

22 MR. JIAMPIETRO: Do you need the question

1 restated?

2 THE WITNESS: No. I think I have it in  
3 mind. As I understand the question, I have performed  
4 no additional work for the Clintons. I need to  
5 advise you that I have, from time to time, provided  
6 information to counsel, but it is information that is  
7 contained in my files.

8 BY MR. JIAMPIETRO:

9 Q In your files relating to Whitewater?

10 A Correct.

11 MR. JIAMPIETRO: Off the record for a  
12 moment.

13 (Discussion off the record.)

14 BY MR. JIAMPIETRO:

15 Q Prior to October 31, 1993, which I have  
16 been informed is the cutoff date for which the  
17 Clintons have agreed to waive privileged  
18 communications, could you please describe any  
19 meetings or conversations you may have had with  
20 Mr. Kendall regarding Whitewater Development  
21 Corporation and the Clintons' investment in  
22 Whitewater?

1 A I have no specific recollection of -- first  
2 of all, there was no meeting with Mr. Kendall prior  
3 to the date of October 31, 1993. I have no specific  
4 recollection of any telephone conversations;  
5 although, there may have been a telephone  
6 conversation in which I may have been asked to  
7 describe certain of the factual issues that were  
8 contained in my report, but I have no specific  
9 recollection of such telephone conversation.

10 Q The issues that you would have been asked  
11 to describe would have all been contained in your  
12 report?

13 A Yes. It would have been comments to the  
14 effect of what certain elements in my report  
15 represented.

16 Q And do you have -- can you recall any of  
17 the specific elements that you were asked with?

18 A As I say, I have no specific recollection  
19 of a telephone conversation, but I want to be clear,  
20 and complete on the record, that is to say that there  
21 may have been a telephone conversation because during  
22 this period of time, leading up to October 31, 1993,



1 this had -- the Whitewater issue again had been a  
2 subject of further inquiry by the press.

3 Q And you have no specific recollection of  
4 any specific issues that may have been discussed with  
5 Mr. Kendall in this telephone conversation?

6 A That's correct. And the only thing I could  
7 add would be factual in nature as to what our work  
8 product was.

9 Q Why don't we move on to LP 00648 through  
10 49 --

11 A Yes.

12 Q -- which is an unsigned letter from  
13 Mr. Patten to James Lyons dated March 25, 1992.  
14 Could you please describe briefly this letter and the  
15 circumstances surrounding the preparation of this  
16 letter?

17 A One of the additional tasks we were asked  
18 to do by Mr. Lyons was to review the federal and  
19 state financial disclosure forms and provide him with  
20 any comments based on that review as it pertained to  
21 the Whitewater Development Company, or anything else  
22 that we might come across, and that's what this

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1 letter does.

2 Q Could you please briefly describe the  
3 results of your analysis once again for the record  
4 because I don't want to have to read the whole letter  
5 in.

6 A I'll do it in summary form by numerical  
7 point.

8 The first point indicates that, to the  
9 extent that either Mr. Clinton or Mrs. Clinton were  
10 officers or directors of Whitewater Development  
11 Company, that disclosure had not been made to any  
12 state regulatory agency, and the required disclosure  
13 had not been made on filings with the state of  
14 Arkansas.

15 The second point indicates that the state  
16 disclosure form did not disclose the Clintons'  
17 investment in Whitewater and that form was filed on  
18 January 31, 1987.

19 Item 3 indicates that the state disclosure  
20 forms in 1988, '89, '90, '91, '92 did not disclose  
21 the Clintons' continuing obligations pursuant to  
22 their guarantee of the Whitewater debt. There was

1 also no disclosure that the McDougals were co-makers  
2 or guarantors of this debt.

3 The fourth point indicates that the state  
4 disclosure form filed on January 31, 1992 did not  
5 reflect Mrs. Clinton's directorships with several  
6 other entities.

7 Finally, as pertains to point 5, on the  
8 federal disclosure form, there is no disclosure as to  
9 the Clintons's financial interest in Whitewater or  
10 their financial obligations pursuant thereto.

11 Q The letter is unsigned. Did you sign this  
12 letter and send to it Mr. Lyons?

13 A I know that I did. I don't know why -- a  
14 copy of the signed letter in my file, but I am sure  
15 there is one somewhere in the chronology file that we  
16 maintain. It is probably in off-site storage at this  
17 point.

18 Q Did you have any follow-up conversations  
19 with Mr. Lyons or anyone else in the Clinton  
20 Presidential campaign regarding your review of the  
21 financial disclosure statements?

22 A No.

1 Q Do you know if any actions were taken  
2 pursuant to your preparation of this letter?

3 A I don't know.

4 MR. JIAMPIETRO: That's the end of my  
5 questions.

6 MR. HADDON: Lance, you don't really want  
7 to ask him questions.

8 MR. COLE: I don't really want to, but I do  
9 have a few things that I would like to clarify. I  
10 will be as brief as I can.

11 EXAMINATION

12 BY MR. COLE:

13 Q Mr. Patten, as you know, my name is Lance  
14 Cole. I'm a member of the Democratic staff. And I  
15 would like to go back to just a few of the points  
16 that Mr. Jiampietro covered.

17 First, I want to be clear on one point.  
18 The work that you did for Mr. Lyons with respect to  
19 an accounting analysis of Whitewater Development  
20 Corporation did not constitute an audit as that term  
21 is defined in the accounting literature; is that  
22 correct?

1 A That's correct, and we set forth that  
2 disclosure in our report. This engagement was  
3 conducted under the statement of standards for  
4 consulting engagements as promulgated by the ASCPA  
5 and did not constitute any kind of attestation  
6 service, including but not limited to audit  
7 compilation review or the application of agreed upon  
8 procedures.

9 Q Were there limitations upon your work  
10 product in terms of both time and documentation that  
11 was available to you when you conducted your  
12 analysis?

13 A The most serious limitation was the lack of  
14 documentation or incomplete records. Time obviously  
15 was a factor, but time only became a factor because  
16 of the incompleteness of the records.

17 Q And in both the final report that you  
18 prepared and the summary report, did you include  
19 language that was intended to put a reader on notice  
20 of these limitations on your analysis?

21 A Yes. And I'll refer to the summary report,  
22 if we could, dated March 23rd, 1992, and I am

1 referring to Bates number 00115, the second full  
2 paragraph. We indicate the scope and limitations on  
3 the scope of our work. And then on page 2, in the  
4 first full paragraph that begins with "In many  
5 instances," we disclose the limitations with regard  
6 to our work. And then finally, on page 3, of that  
7 report, the first full paragraph which begins "while  
8 we believe this report" also restates the  
9 limitations.

10 Q Were you aware at the time you were  
11 preparing your report that one of the reasons that  
12 you were asked to do the work was to obtain  
13 information to respond to press inquiries concerning  
14 Whitewater?

15 A Yes.

16 Q And did you understand that some or all of  
17 the information that you compiled might be made  
18 available to the public and the press?

19 A I understood that that was a possibility,  
20 but it certainly was not my decision to make and  
21 that's why the reports indicated that the material  
22 was confidential and within the accountant/client

1 privilege.

2 Q And was it your understanding that it was a  
3 judgment that would be made by the client as to what  
4 portions of the information you provided would or  
5 would not be released publicly?

6 A That's correct.

7 Q And are you aware of any legal duty or  
8 obligation on the part of the Clintons to release all  
9 of the report that you prepared?

10 A I don't think they have any obligation to  
11 release them.

12 Q And finally, in terms of the time that was  
13 available to you to complete your report, at the  
14 outset, did you have an understanding as to a goal or  
15 target as to how long you intended to spend on your  
16 analysis?

17 A We did not have a specific goal; the goal  
18 was yesterday.

19 Q Meaning that you knew that you needed to  
20 report your work as quickly as possible, based upon  
21 the information that you had available to you and the  
22 time that would be required to perform an analysis?

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1 A Correct.

2 Q I would like to ask you a couple of  
3 questions that relate to work that was subsequently  
4 done on Whitewater by the law firm of Pillsbury,  
5 Madison & Sutro. I think assisted by a forensic  
6 accounting firm called Tucker Allen Incorporated.

7 Are you aware that Pillsbury, Madison &  
8 Sutro prepared two reports on Madison Guaranty  
9 Savings & Loan and Whitewater Development Company,  
10 Inc.; one dated April 24, 1959 and one dated December  
11 13, 1995?

12 A Yes.

13 Q Have you ever had occasion to read or  
14 review those reports?

15 A I have had copies of those reports  
16 furnished to me. I can't say that I did an in-depth  
17 read of the report, but I certainly did a cursory  
18 review.

19 Q I have a few questions as to the extent to  
20 which those reports and the findings they contain are  
21 consistent, or perhaps inconsistent, with your  
22 findings in 1992. Before I ask you those questions,



1 if I could direct your attention back to the March  
2 22, 1994 letter to Mr. Kendall from Mr. Lyons that we  
3 discussed a few minutes ago.

4 A Yes, sir.

5 Q I will try to avoid going back over ground  
6 we've already covered here. In short, that letter  
7 reports upon a change to the conclusions in your  
8 report of approximately \$20,700, relating to a  
9 payment that you had treated as related to  
10 Whitewater, but based upon subsequent information  
11 that you and Mr. Lyons obtained from Mr. Kendall, it  
12 was determined that it in fact did not relate to  
13 Whitewater. Is that a fair summary of the letter?

14 A Yes.

15 Q Now, with regard to that information and  
16 that, amendment to your report, that was information  
17 that according to this letter, had been provided to  
18 Mr. Lyons by Mr. Kendall and Mr. Lyons had then  
19 shared with you; is that correct?

20 A That's correct.

21 Q And to the best of your knowledge, did the  
22 information that necessitated that change in your

1 report come out of the Pillsbury, Madison review, or  
2 was that information yielded by Pillsbury, Madison  
3 review?

4 A No, not that I am aware of.

5 Q Not that I am aware of either, but the  
6 point to my question is, that there is a section in  
7 the first Pillsbury, Madison report, dated April 24,  
8 1995 -- and I am not going to take a lot of time  
9 reading this into the record, but if there is  
10 something you would like me to read into the record,  
11 interrupt me and I will be glad to do so -- that at  
12 pages 129 and 130 of that report, there is what I  
13 would call in general terms a reconciliation of  
14 Pillsbury's findings to what the findings in what  
15 they refer to as the Lyons report, which encompasses  
16 your report to Mr. Lyons.

17 And they note the \$20,000 correction that's  
18 the subject of the March 22, 1994 letter to  
19 Mr. Kendall from Mr. Lyons, and then they go on to  
20 note a number of other items and conclude.

21 And I will read this short portion of the  
22 report into the record, "the \$3945 difference between

1 this amount and that amount is the Pillsbury analysis  
2 of the Clintons's total investment in Whitewater."

3 And the \$46,137 figure reached by the Lyons  
4 report is explain as follows. And then they go  
5 forward and reconcile that \$3945 difference.

6 My question to you, Mr. Patten, is, do you  
7 recall reviewing the Pillsbury report? And without  
8 asking you if you can recall exact dollar amounts,  
9 learning that after two years of investigation and  
10 based on the testimony that our Committee has  
11 received approximately \$4 million of taxpayer funds,  
12 expended that, the Pillsbury report found a  
13 difference of less than \$4000 between the \$46,000  
14 figure you had reported after the March 22, 1994  
15 letter, and the \$42,000 figure that the Pillsbury  
16 report found.

17 Was that generally consistent with your  
18 recollection?

19 A Yes, I was made aware of that.

20 Q And did you have a view as to whether or  
21 not that had any bearing on the quality and  
22 completeness of the work product that you and

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1 Mr. Lyons had completed?

2 A My view, it was totally corroborative of  
3 the conclusion that is we reached.

4 Q And do you recall in reviewing the  
5 Pillsbury reports whether there were any findings or  
6 conclusions in those reports of a material nature  
7 that were contrary to your findings in 1992?

8 A Again, Mr. Cole, I did not review the  
9 report in detail and analyze each element which  
10 Pillsbury people did and compared to it my report.

11 My general reaction was that they came to a  
12 conclusion that the Clintons had invested an amount  
13 that was very close to what we had calculated, and  
14 had had a lot more time to arrive at their  
15 conclusion.

16 I believe that they had available to them  
17 many more records than what we had available to us,  
18 but yet we were able to reach a reasonable conclusion  
19 with respect to the amount the Clintons's investment.

20 Q And let me ask you: When you were  
21 preparing your report and conducting your analysis,  
22 you did not have subpoena power to compel the

1 production of documents or records from third  
2 parties; is that correct?

3 A That's correct.

4 Q And you relied upon the information that  
5 was voluntarily provided to you by the Clintons, the  
6 Clintons' accountants and whatever other information  
7 that you or the Clinton campaign could collect?

8 A That's correct.

9 Q And were you able to compel people to give  
10 depositions or other sworn testimony regarding the  
11 events relating to Whitewater in the same way that  
12 Pillsbury, Madison was able to do?

13 A No.

14 Q As I said, I don't want to take a lot of  
15 time, particularly late in the day on a Friday, going  
16 through the entire Pillsbury report, but I would like  
17 to draw your attention to three or four findings  
18 included in those reports, and ask you whether they  
19 are, in your view, consist especially with your  
20 findings in 1992; inconsistent with your findings in  
21 1992; or if you have no basis for having an opinion  
22 one way or another, you can tell me that as well. Is

1 that fair?

2 A Yes, sir.

3 Q And I will give the page reference to the  
4 report for our record and then I will read the entire  
5 sentence or two into the record.

6 First from the April 24, 1995 preliminary  
7 report on Whitewater Development Company by  
8 Pillsbury, Madison, at page 5, there is a statement,  
9 that reads as follows "the available evidence shows  
10 only that the Clintons knew of the existence of at  
11 least some of the bank debts incurred by Whitewater,  
12 and its shareholders signed some promissory notes and  
13 loan extensions, and on occasions made payments on  
14 bank debt or taxes out of their personal checking  
15 account.

16 "The evidence also suggests that the  
17 Clintons had little direct involvement in  
18 Whitewater's financial management until 1988 by which  
19 time all the lots had been sold and McDougal had  
20 suffered a nervous breakdown."

21 Mr. Patten, going back to the information  
22 you had available to you in 1992, when you prepared

1 your report, is the conclusion from the Pillsbury  
2 report that I just read to you consistent with you  
3 found?

4 A Would you direct me to the page you  
5 referenced again?

6 Q Yes, the April 24, 1995 report, page 5. Do  
7 you have a copy of the report there?

8 A I do, and I am having trouble finding where  
9 you are referencing.

10 Q Let me see if I can -- because I am working  
11 off some notes that I took of the report. And now,  
12 going to the report, I am having the same problem you  
13 have, so I may have noted a page number wrong.

14 Let's go off the record for a moment and I  
15 will find a page cite for you.

16 (Discussion off the record.)

17 MR. COLE: Let's go back on the record.

18 BY MR. COLE:

19 Q I think, Mr. Patten, if you look at page 5  
20 of the April 24, 1995 Pillsbury report, that  
21 paragraph numbered 5, the second sentence in that  
22 paragraph, is the quote that I just read to you.

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1 A Yes, sir, I have it, and in response to  
2 your question, I concur that this is consistent with  
3 what we found.

4 Q And if you could turn to page 24 of the  
5 same report, there is a statement in the second full  
6 paragraph that reads "so far as one can determine  
7 from the available documentary evidence, little  
8 Whitewater financial information was transmitted to  
9 the Clintons. However, the Clintons did sign  
10 documents in connection with various loans and loan  
11 extensions. Letters to or from the Clintons were  
12 relatively infrequent."

13 Is that finding consistent with what you  
14 found in 1992?

15 A It is.

16 Q And do you have a copy of the December 13,  
17 1995 supplemental report on Madison Guaranty Savings  
18 & Loan and Whitewater Development Company that was  
19 prepared by Pillsbury, Madison & Sutro?

20 A Yes.

21 Q If you turn to page 71 of that report,  
22 there is a statement that reads "putting aside for



1 the moment the legal significance of the phrase  
2 'passive investor' the evidence is essentially  
3 consistent with this assertion. For the relevant  
4 period (ending in 1986) the evidence suggests that  
5 the McDougals and not the Clintons had managerial  
6 control over the enterprise or received annual  
7 reports or regular financial summaries. Instead, and  
8 as the Clintons suggest, their main contact with  
9 Whitewater seems to have consisted of signing loan  
10 extensions and renewals."

11 Mr. Patten, is that consistent with the  
12 findings of your report in 1992?

13 A Yes.

14 Q And finally, last one, if you turn to page  
15 77, the last sentence of the carryover paragraph at  
16 the top of the page reads "therefore on this  
17 basis" -- "on this record there is no basis to assert  
18 that the Clintons knew anything of substance about  
19 the McDougals loans to Whitewater, the source of the  
20 funds used to make those loans, or the course of the  
21 funds used to make payments on bank debt."

22 Is that consistent with your findings in

1 1992, Mr. Patten?

2 A Yes.

3 Q I wanted to put these in the record because  
4 I wanted to explore whether when you did your work in  
5 1992, which was some 3-1/2 years before Pillsbury,  
6 Madison did its report, and when presumably some  
7 people's memories may have been fresher, whether  
8 there was anything that was contrary or inconsistent  
9 to these Pillsbury, Madison findings that you  
10 obtained during your review. And I take it the  
11 answer to that question is no?

12 A That is correct.

13 Q Turning away from the Pillsbury report,  
14 what I would like to do now is ask you a series of  
15 questions that relate to the repayment of the loans  
16 that were initially taken out by the Clintons and the  
17 McDougals in 1978 to purchase the property that  
18 became a part of Whitewater Development Corporation.

19 Before I ask you those questions, there are  
20 some dates that I would like to draw your attention  
21 to. And this is difficult because we are doing this  
22 by telephone, and I can't show you the documents that

1 evidence these dates. But what I would like to do,  
2 if it is agreeable to you and your counsel and  
3 Mr. Jiampietro, is to reference the dates and the  
4 documents, perhaps read relevant excerpts from the  
5 documents into the record and ask you to perhaps take  
6 just a few notes of the these dates and events so you  
7 can refer to them when I go forward with that line of  
8 question.

9 Mr. Haddon, are you comfortable proceeding  
10 in that manner?

11 MR. HADDON: Yes.

12 MR. JIAMPETRO: I have no objection.

13 BY MR. COLE:

14 Q The first date I would like to reference is  
15 the initial purchase of the Whitewater property and  
16 the obtaining of the bank loans in August 1978. And  
17 I think we are all in agreement on this date.

18 The second date I would like to reference  
19 is the formation of the corporation, Whitewater  
20 Development Company, Inc., which -- if I pull a  
21 document out -- we have document that references the  
22 date as June 18th, 1979. And for the record, there

1 is a copy of the Whitewater Development Company, Inc.  
2 1989 corporate income tax return, document number JML  
3 2047, and item E on that form shows the date of  
4 incorporation June 18th, 1979. And as I said, I just  
5 want to note that date for the record.

6 The next date going forward that I would  
7 ask you to make a note of is August 5th, 1981. There  
8 is a document that's been produced to the Special  
9 Committee by the Citizens Bank of Flippin; it bears  
10 Bates number CVF 0281. Obviously this is not a  
11 document that you will have, Mr. Patten, but I will  
12 describe it to you.

13 It is headed "guarantee" and it reads "the  
14 undersigned Whitewater Development Company, Inc. for  
15 value received do hereby guarantee the payment to  
16 Citizens Bank of Flippin, Arkansas of that certain  
17 negotiable promissory note dated the 5th day of  
18 August 1978 in the principal sum of \$182,611.20,  
19 executed by Bill J. Clinton, Hillary Rodham Clinton,  
20 James B. McDougal and Susan McDougal."

21 I won't read the rest of the guarantee form  
22 but it is dated August 5, 1981, executed by

1 Whitewater Development Company, Inc. by James B.  
2 McDougal, title shown as president, and as I  
3 indicated, the document number is CBF 281.

4 The next document that I would like to note  
5 the date of is October 30, 1982. Another document  
6 produced to the Special Committee by the Citizens  
7 Bank of Flippin, bearing Bates number CBF 0312,  
8 headed "excerpts from the minutes of the meeting of  
9 the board of directors of Whitewater Development  
10 Company, Inc."

11 And I won't read the entire document, but  
12 it includes an entry that reads "the following are  
13 exact excerpts of board actions taken at such  
14 meeting. Be it resolved that Whitewater Development  
15 Company, Inc. pledges to Citizens Bank & Trust  
16 Company as set forth purpose of securing obligations  
17 of the corporation to Citizens Bank & Trust Company,  
18 and to guarantee obligations to Citizens Bank & Trust  
19 Company, which the corporation assumed and agreed to  
20 pay."

21 And I won't read the remainder of the  
22 document, but that is signed by S.H. McDougal,

1 secretary of Whitewater Development Company, Inc.  
2 Moving forward in time, to November 1984,  
3 again documents produced to the Special Committee,  
4 including a loan renewal form, dated November 26,  
5 1984, from Citizens Bank & Trust Company, bearing  
6 Bates number DKSJ 010588. It indicates that the  
7 borrowers names are Whitewater Development Company,  
8 Inc., James B. McDougal, Susan H. McDougal, Bill J.  
9 Clinton, Hillary Rodham Clinton; renew a loan in the  
10 amount of \$100,121.43 on that date. Signed by James  
11 B. McDougal and S.H. McDougal, if I am reading the  
12 signature lines correctly. That's the last document  
13 I have.

14 Mr. Patten, what I would like to do is  
15 trace through with you and ask you some questions  
16 relating to the repayment of the loans that were  
17 taken out initially in August of 1978 to finance the  
18 purchase of the Whitewater property. And I am going  
19 to be focusing on the \$182,000 loan at Citizens Bank  
20 & Trust.

21 And, what I want to do is ask you a number  
22 of questions about the interest and principal

1 payments on those loans that occurred over time, and  
2 in each instance I am going to attempt to distinguish  
3 between principal payments and interest payments.  
4 And I am going to ask you, in your professional  
5 opinion as a certified public accountant, about the  
6 tax consequences, if any, to the corporation and its  
7 shareholders. And in particular -- and I am giving  
8 you all of this before I start asking questions  
9 because this is difficult to do by telephone and I am  
10 trying to be as efficient as we can be.

11 In each instance, I am going to ask you  
12 some questions about whether a particular payment  
13 would be viewed as an accounting matter, as a loan to  
14 the shareholder, a return of capital to the  
15 shareholder, a taxable distribution by the  
16 corporation, or perhaps by something else, if you  
17 have a different answer.

18 Is that clear what I am going to try to do  
19 here?

20 A I believe I understand what you are trying  
21 to do.

22 Q And I apologize for doing this with you

1 over the telephone, but hopefully if I ask my  
2 questions clearly, I know you will give your answers  
3 clearly, and we will get a record that will make some  
4 sense here.

5 Starting in 1978, after the Clintons and  
6 the McDougals borrowed money to purchase the  
7 Whitewater property, at that time when the Clintons  
8 made interest payments on those loans, were the  
9 Clintons entitled to deduct those payments on their  
10 personal income tax returns?

11 A As a direct obligor on the loan, yes.

12 Q And I take it the same would be true of the  
13 McDougals?

14 A Yes.

15 Q And obviously if there had been a principal  
16 payment, at that time, no deduction was allowed for  
17 principal payments; am I correct about that?

18 A That's correct.

19 Q Moving forward then to the formation of the  
20 corporation, you testified at some length earlier  
21 today about the transfer of the Whitewater land to  
22 the corporation and I think Mr. Jiampietro showed you



1 documents that indicated that the land was  
2 transferred to the corporation in an amount that was  
3 greater than its purchase price, and I don't want to  
4 cover again all of your testimony on that.

5 But your final conclusion, as I understood  
6 it, was that that event did not have any tax  
7 consequences for the Clintons or the McDougals as  
8 shareholders in the corporations; is that correct?

9 A That's correct.

10 Q Going forward, after the formation of the  
11 corporation and the transfer of the land to the  
12 corporation between June 18th, 1979 and August 5,  
13 1981 -- and I am picking that date because that's the  
14 date that a guarantee was executed by Whitewater and  
15 I don't know whether or not that would make a  
16 difference in your answers but I am not going to  
17 include the time in which the guarantee was in  
18 effect.

19 So focusing on June 18th, 1979 to August 5,  
20 1981, during that period if the Clintons made an  
21 interest payment on the loan that had been taken out  
22 in 1978 to purchase the Whitewater property out of

1 their own funds, would that payment have been  
2 properly deductible on the Clinton's personal income  
3 tax returns?

4 A Payment of interest?

5 Q Yes.

6 A Yes.

7 Q And would the same have been true for the  
8 McDougals if they had made a payment out of their own  
9 personal funds?

10 A Yes.

11 Q And if the corporation had made a payment  
12 during that time period out of the corporation's  
13 funds, and paid -- and let's now distinguish between  
14 interest and principal -- if the corporation had made  
15 a payment of interest on the land acquisition loans,  
16 would that payment have had tax consequences for  
17 Clintons as shareholders in the corporation?

18 A Well, to the extent that they made -- that  
19 the corporation made the payment and to the extent  
20 that there was an obligation owing back to the  
21 Clintons and McDougals as initially reflected on the  
22 books and records of Whitewater, that payment would

1 be deducted as a payment on behalf of the Clintons  
2 and the McDougals, who would then in turn reflect an  
3 income item and an offsetting interest expense item  
4 so it would be a wash from the individual  
5 standpoint.

6 Q And that question was for a payment that  
7 was made by the corporation.

8 Let me ask you now, if a payment were  
9 made --

10 MR. JIAMPIETRO: Excuse me. Can I just ask  
11 one question for the record? I think it would be  
12 best here. In your review of the Clintons's personal  
13 tax returns, Mr. Patten, did you find any evidence of  
14 any such income items and offsetting interest on the  
15 Clintons's personal tax returns?

16 THE WITNESS: Not to my recollection.

17 MR. JIAMPIETRO: Thanks.

18 BY MR. COLE:

19 Q During the same time period, Mr. Patten, if  
20 an interest payment had been made by the McDougals on  
21 the loans to pay all of the interest that would have  
22 been due at that time, and the Clintons had made no

1 payment of interest, would that have had any tax  
2 consequences for the Clintons?

3 A Let me make sure I heard the question  
4 correctly. You are saying that to the extent that  
5 the McDougals made the interest payments on a  
6 personal basis and Clintons made no interest  
7 payments?

8 Q Yes.

9 A Were there any tax consequences to the  
10 Clintons?

11 Q Yes.

12 A No.

13 Q The reason I asked the question the way I  
14 did this is complicated because, as I understand the  
15 loan documents, the Clintons and McDougals all and  
16 each were jointly and severally liable. So it is not  
17 as if one had an obligation to make half of a loan  
18 payment and the other had an obligation to make  
19 another half under the loan documents. They all were  
20 primary obligors and jointly and severally liable.

21 Is that consistent with your understanding?

22 A According to the loan document, that would

1 be correct.

2 Q And so what I was really asking was, if the  
3 McDougals had what we would colloquially refer to as  
4 the Clintons' half of an interest payment, is it your  
5 testimony that there would be no tax liability for  
6 the Clintons resulting from that payment?

7 A That's correct.

8 Q And then finally, if a company that the  
9 McDougals controlled, other than Whitewater  
10 Development Corporation, had made a similar payment  
11 of interest and the Clintons had made no payment,  
12 would there have been any tax consequences for the  
13 Clintons of such a payment?

14 Same question I asked you before, except  
15 rather than the McDougals making a payment, it would  
16 be a company controlled by the McDougals.

17 A Well, as I interpret your question, I think  
18 the transaction then runs between a McDougal  
19 controlled company and Whitewater just as it would in  
20 an individual situation. I think the answer to your  
21 question is no, there would be no tax consequences to  
22 the Clintons.

1 Q Now, let's turn, for the same time period,  
2 to payments of principal. If the Clintons made a  
3 principal payment during that time period, they would  
4 not have been able to deduct that payment on their  
5 personal income tax return; is that correct?

6 A That's correct.

7 Q Now, let me ask you, if the McDougals had  
8 made a payment for the Clintons -- a principal  
9 payment for Clintons during this time period, what  
10 would be the tax consequences, if any, for the  
11 Clintons on their personal returns of such a payment?

12 A There would be none because of all parties  
13 were direct obligors on the loan.

14 Q And I would like to ask you the same  
15 question that I did before, about if a principal  
16 payment had been made by a company or companies that  
17 were controlled by the Clintons, what, if any, would  
18 have been the tax consequences for the Clintons of  
19 such a payment?

20 A Controlled by the Clintons?

21 Q I'm sorry. If I said controlled by the  
22 Clintons, I meant controlled by the McDougals.

1 A To the extent the transaction transpired  
2 between a McDougal controlled company and Whitewater  
3 and to the extent that a payment was made by that  
4 company to reduce the loan?

5 Q Yes, a principal payment to reduce the  
6 principal balance of the loan.

7 A There may or may not be tax consequences in  
8 that circumstance.

9 Q And can you describe for us briefly how one  
10 might analyze that situation from a tax liability  
11 perspective with regard to the personal tax liability  
12 of the Clintons?

13 A Well, I am going to do it in the abstract.  
14 I am going to create a specific set of facts, and the  
15 facts are that to the extent that a McDougal  
16 controlled company advanced moneys or loaned moneys  
17 to Whitewater, Whitewater used those to retire or pay  
18 down principal on the loan, and to the extent  
19 Whitewater then reduced its note payable to the  
20 individuals, i.e. the Clintons and McDougals, there  
21 should be no tax consequence.

22 However, if that obligation was not

1 reduced, it could be construed to be some form of  
2 income. But again, that in a conceptual or  
3 hypothetical presentation.

4 Q If I am understanding your answer correctly  
5 then, in your view the tax treatment of such a  
6 transaction would be determined by how Whitewater  
7 treated the transaction on its books and records?

8 A And how it treated the transaction on its  
9 books and records in relation to any moneys owing to  
10 the shareholders.

11 MR. JIAMPINETRO: Can I ask you one question  
12 here so we are perfectly clear on the record?

13 Based on your experience as an accountant,  
14 is it Whitewater's books and records which would be  
15 determinative according to the IRS, or wouldn't the  
16 IRS look at the substance rather than the form of any  
17 transactions in determining -- in resolving these  
18 issues?

19 THE WITNESS: Well, first of all, the  
20 question -- let me answer the question you asked.

21 The IRS, if they were viewing the  
22 transaction, would look at the facts and



1 circumstances, and they would make a determination as  
2 to the substance of the transaction, and as to who,  
3 if anybody, was entitled to a deduction, period.

4 BY MR. COLE:

5 Q Now, to close out the loop, so to speak,  
6 let me ask you, if Whitewater Development  
7 Corporation, using corporate funds, had made a  
8 principal payment of the land acquisition loans  
9 during this time, would that payment have had income  
10 tax consequences for the Clintons with respect to  
11 their personal income tax returns?

12 A During what time frame?

13 Q We are still in the post-incorporation,  
14 that is after June 18th, 1979, but prior to the  
15 execution of a guarantee on August 5, 1981, the time  
16 period.

17 A Again, to the extent that the transaction  
18 reflected in the reduction of any obligations owing  
19 from the corporation to the individuals, that is to  
20 say, that the payment of principal on the outstanding  
21 loan at Citizens Bank went to reduce any obligation  
22 on the books and records of Whitewater to the

1 individuals, I do not believe that there would be a  
2 tax consequence.

3 And the reason I say that is essentially  
4 what is happening is that Whitewater is writing a  
5 check, that check goes to reduce principal on the  
6 outstanding loan. That would be the same thing as  
7 Whitewater cutting a check to the individuals,  
8 reducing the obligation of Whitewater to the  
9 individuals, the individuals turning around and  
10 taking those same moneys and reducing the principal  
11 at the bank.

12 Q And would that -- and correct me if I am  
13 not using the correct tax terms here -- but would  
14 that be regarded as a taxable distribution by the  
15 corporation to its shareholders?

16 A Not based on the description I just gave  
17 you.

18 Q Going forward in time then to August 5th,  
19 1981 when the documents that we have indicate that  
20 Whitewater Development Corporation executed a  
21 guarantee and it was provided to the bank -- and I  
22 say that based upon the fact that the document was

1 produced from the bank's records -- a guarantee on  
2 the personal loans that the Clintons and McDougals  
3 had taken out to acquire the land, does that event --  
4 and by "that event," I mean the execution of the  
5 guarantee by the corporation -- affect in any way  
6 your analysis of the tax issues that we just  
7 discussed?

8 A No, because as a guarantor you are not a  
9 direct obligor on the loan, so any of the questions  
10 you just asked would elicit the same response up  
11 until such point Whitewater became a direct obligor  
12 on the indebtedness.

13 Q Let me go forward then to 1982 when the  
14 documents that we have indicate that the proceeds of  
15 escrow contracts held by Whitewater Development  
16 Corporation on land sales by the corporation were  
17 used by corporation to retire the land acquisition  
18 debt that the Clintons and the McDougals had taken  
19 out in 1978. And to try to do this as quickly as  
20 possible, I am doing all of it hypothetically,  
21 without referring to particular documents or  
22 payments.

1 But the documents that we have indicate  
2 that between 1982 and 1992, escrow contract proceeds  
3 were used along with, in some instances, other  
4 funds -- we will talk about those later -- to repay  
5 the land acquisition loans.

6 My question to you is, did the use of those  
7 escrow contract proceeds by the corporation to repay  
8 the land acquisition loans have any income tax  
9 consequences for the Clintons, with respect to their  
10 personal income tax returns?

11 A I am going to have to give you, as I have  
12 in the past, a hypothetical answer.

13 That answer is, to the extent that there  
14 were obligations owing to the individuals, to the  
15 extent that the reduction in those obligations owing  
16 to the individuals by virtue of the corporation  
17 reducing the outstanding indebtedness, I did not  
18 believe that there is a tax consequence.

19 Q And in that regard, you were talking about  
20 payments that were made to reduce the principal  
21 amount of the loans; am I correct?

22 A That's correct.

1 Q And let me ask you the same question about  
2 payments that were made to pay interest that was due  
3 and owing on the loans. Would the payment of  
4 interest using the proceeds of the escrow accounts  
5 have any tax consequences for the Clintons with  
6 respect to their personal income tax returns?

7 A To the extent that it is interest that  
8 would have been otherwise paid to the Clintons on the  
9 obligations due them from Whitewater, and in turn,  
10 Clintons paying down or paying the interest on the  
11 direct obligation, no.

12 Q And is there a theory that you can  
13 envision, Mr. Patten, by which any of the payments  
14 which we have just described would result in income  
15 to the Clintons on their personal returns? Because  
16 if there is, I would like to discuss it and ask you  
17 some questions about events and whether they had an  
18 effect on them or not.

19 A No, I think that we could sit here for the  
20 next four hours and describe a whole series of  
21 hypotheticals that would possibly create a different  
22 result.

1 All of my answers have been predicated on  
2 the fact that, by virtue of the fact that the  
3 indebtedness was retained and remained in the name of  
4 the individuals, and the fact that the initial  
5 recordation of the transaction on the "books of  
6 Whitewater" reflected an obligation, a life  
7 obligation back to the Clintons and the McDougals,  
8 that payments made on the obligation directly by the  
9 corporation, if properly accounted for, applied on  
10 books and records of Whitewater should not produce  
11 taxable consequences.

12 Q Let me ask you another question, and if  
13 this is not a fair question, I am sure you or your  
14 counsel will let me know.

15 If you had been a tax preparer for the  
16 Clintons during this time period and if you had known  
17 that the Clintons had an investment in Whitewater of  
18 the kind that we have been describing, which briefly  
19 was purchase of land with personal loans for which  
20 they were primary obligors and in contribution of  
21 that land to a corporation, would you have had reason  
22 to report income by the Clintons on their tax returns

1 when you prepared them?

2 MR. HADDON: We need to discuss that and so  
3 we will need to go out of the room. But I want to  
4 tell you preliminarily that Mr. Patten is not a tax  
5 preparer.

6 MR. COLE: That's fair, and that's why I  
7 prefaced it as I did. I don't want to make him an  
8 expert in a field in which he is not expert, so  
9 actually I will withdraw the question. I think  
10 perhaps we will save it for the people who actually  
11 did prepare the tax returns.

12 MR. JIAMPIETRO: He has done a pretty good  
13 job on giving an opinion on tax preparer questions,  
14 though.

15 MR. COLE: We need to go off the record for  
16 a moment so the court reporter can change her tape.

17 (Pause.)

18 BY MR. COLE:

19 Q Mr. Patten, when I gave you a series of  
20 events and documents earlier, I noted that the  
21 documents that have been produced to the Special  
22 Committee indicate that in November 1984, the loan

1 extension agreement with the bank that made the  
2 initial \$182,000 loan, and Whitewater Development  
3 Corporation as an obligor on the loan agreement.

4 Does that event have any consequence with  
5 respect to the tax treatment of the payments that we  
6 have been discussing in the last few minutes? And by  
7 "tax treatment," I mean the tax treatment for the  
8 Clintons with respect to their personal tax returns.

9 A To the extent that Whitewater Development  
10 Corporation is now a direct maker on the obligation,  
11 they would be entitled to take the interest deduction  
12 directly. Whatever relationship or -- I'm sorry,  
13 whatever taxable event might be created would be  
14 dependent on the facts and circumstances at the time  
15 those payments were made, and the relative financial  
16 positions of all the parties.

17 Q Well, let me try to sharpen that up a bit.  
18 Let's assume, without digging out all the documents  
19 and confirming the amounts, let's assume that for at  
20 least some tax years after 1984, Whitewater had  
21 sufficient tax -- I'm sorry, cash flow from escrow  
22 contract land sales to service the debt; that is, to



1 make principal and interest payments as required by  
2 the bank in retiring the debt.

3 In that instance, where the corporation had  
4 become -- and I don't know if I want to say primary  
5 obligor on the loan because that may or may not be  
6 the right term -- but had become a signatory or maker  
7 of the loan agreement, is there any way that payments  
8 by the corporation using corporate funds in that  
9 situation would result in any tax liability for the  
10 Clintons personally?

11 A Yes. I have to give you the same answer.  
12 It depends on what the status of the respective  
13 parties were in relation to each other.

14 To the extent we have to go back to the  
15 fact that there was an original transaction that  
16 created the original amount of the debt and the  
17 original obligations owing back to the company from  
18 the individuals, to the extent that the proper  
19 accounting is applied to those payments and those  
20 payments are either treated as a return of interest  
21 or principal back to the Clintons or the McDougals,  
22 there should be no net tax consequence to the

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1 individuals.

2 But to the extent that there are not  
3 obligations owing back to the individuals, there  
4 could be tax consequences.

5 Q And when you say to the extent there were  
6 or were not obligations owing back to the  
7 individuals, under the tax law, would the test there  
8 be whether there existed a formal written document  
9 evidencing that obligation, or would it be measured  
10 by the intent of the parties at the time of the  
11 transaction?

12 A You are getting into -- you are getting  
13 into an area of tax law that I would not feel  
14 comfortable opining on.

15 Q I can't believe I have done that, but I  
16 will accept your answer.

17 In the review that you conducted for  
18 Mr. Lyons and the Clintons in 1992, did you advise  
19 the Clintons to make any amendments or corrections to  
20 their prior years tax returns that they failed to  
21 make?

22 A That was not within the scope of our

1 obligation or our work product. We simply provided  
2 the work product, as I've indicated.

3 Q I'm sorry, we lost -- was there anything  
4 after provided the work product as you've indicated?

5 A We simply provided the information  
6 contained in our work product, and we were not asked  
7 to provide advice as to the questions that you  
8 raised.

9 MR. COLE: I don't have anything further at  
10 this time.

11 EXAMINATION

12 BY MR. JIAMPIETRO:

13 Q I have a couple of follow-up questions. I  
14 don't think it will take that long.

15 Mr. Patten, you said you are not -- I think  
16 your words were -- not a tax preparer.

17 A Those are Mr. Haddon's words, but they  
18 accurately reflect what I do for a living. The only  
19 return I prepare is my own.

20 Q How long has it been since you prepared  
21 somebody else's return and gotten compensated for it?

22 A I have never prepared anybody else's return

1 and gotten compensated for it.

2 Q That's fine. Just so we have it clear on  
3 the record that you are not a paid tax preparer, so  
4 to speak, and that a lot of the questions you have  
5 been asked have asked you to opine on a lot of issues  
6 about which you may not have had an opportunity to  
7 review the tax code in depth recently; is that  
8 correct?

9 A That's correct. I have a general working  
10 knowledge of the Internal Revenue Code, but I do not,  
11 as a matter of course, prepare tax returns for either  
12 individuals or corporations.

13 Q Let me --

14 MR. COLE: But you are a certified public  
15 accountant; correct, Mr. Patten?

16 THE WITNESS: That's correct.

17 MR. COLE: You're licensed and have kept in  
18 good standing the portions of the certified public  
19 accountant requirements that pertain to tax matters?

20 THE WITNESS: Well, there is a continuing  
21 education requirement and the continuing education  
22 requirement requires you obtain so many hours in

1 certain areas, one of which is taxation, but I have  
2 basically maintained my hours in areas other than  
3 taxation.

4 BY MR. JIAMPIETRO:

5 Q Let me ask you some questions based on your  
6 review and analysis of the Whitewater records. Based  
7 on your understanding of the Whitewater transaction,  
8 and given the dates and events described to you by  
9 Mr. Cole, was it your understanding that, when the  
10 land was transferred from the Clintons and McDougals  
11 to Whitewater Development Corporation, that the  
12 mortgage was transferred with that land, and that  
13 notes payable were recorded on the books to the  
14 Clintons and McDougals?

15 A No. My understanding was that the land was  
16 conveyed subject to the mortgage obligation that  
17 remained the direct obligation of the Clintons and  
18 the McDougals. And recording the transactions on the  
19 books -- I am using that term very loosely -- of  
20 Whitewater, what was reflected was the transfer of  
21 the land, of the value that we discussed at great  
22 length earlier today, and corresponding obligations

1 going back running in favor of the Clintons and the  
2 McDougals.

3 MR. COLE: And to ask the same question  
4 another way, Mr. Patten, is it your view, based on  
5 the documents you reviewed, that the Clintons and the  
6 McDougals remained primary obligors on the land  
7 acquisition loans after the formation of the  
8 corporation?

9 THE WITNESS: Yes.

10 MR. COLE: At any time, did they cease  
11 being primary obligors?

12 THE WITNESS: No.

13 BY MR. JIAMPIETRO:

14 Q Let me ask you to review one last document,  
15 LP 01060.

16 A Give me that again.

17 Q LP 01060.

18 A Is that one of the documents you requested  
19 we pull?

20 Q Yes, it is the March 23rd final report that  
21 was faxed to Hillary Rodham Clinton on March 22, 1991  
22 at 5:05 p.m.

1 A Right.

2 Q If you could go to the second observation  
3 at the bottom of that page?

4 A Yes.

5 Q It discusses the Clintons' -- let me just  
6 read it into the record. "It is also our  
7 understanding that the holder of the mortgage loan,  
8 First Ozark National Bank, has orally confirmed that  
9 as of March 19, 1992 WDC has an outstanding principal  
10 balance on its mortgage loan of approximately  
11 \$10,400, plus accrued interest. It is the position  
12 of the bank that the Clintons are joint and several  
13 guarantors of this obligation, pursuant to a  
14 continuing guarantee executed on March 26, 1987.  
15 The" -- end of quote.

16 The First Ozark National Bank was the  
17 successor entity to the Citizens Bank & Trust.

18 And I am just wondering if this is slightly  
19 at odds with what you basically said a moment ago,  
20 which was that the Clintons remained directly liable  
21 on the loans and they weren't guarantors?

22 A It may be. I would have to go back and

1 look at the documentation. For some reason I had the  
2 sense they remained a direct maker on the note, but I  
3 would have to go back and look at the underlying  
4 documents. They still had an obligation as a result  
5 of being a guarantor. They may not have been the  
6 direct obligors at that point.

7 Q You noted earlier, in talking with  
8 Mr. Cole, that a guarantor is not a direct obligor;  
9 is that correct?

10 A That's correct.

11 Q And you stated that if you are not a direct  
12 obligor, one is not entitled to take interest  
13 deductions on a loan?

14 A That's my understanding of the tax law.

15 Q The other question I wanted to ask you with  
16 regard to this what I think has been termed a mirror  
17 loan theory, based on your experience and your  
18 understanding of the Internal Revenue Code, would the  
19 IRS solely rely on an entry in Whitewater's books  
20 that notes payable were issued to the Clintons and  
21 McDougals to determine whether or not notes payable  
22 actually existed?



1 I guess my question is -- and you may have  
2 already responded to this -- the IRS would look at  
3 the full facts before them, the substance of the  
4 transactions, not necessarily the form of the  
5 transactions, in determining whether or not notes  
6 payable existed, whether or not the mortgage was  
7 transferred to Whitewater Development Corporation; is  
8 that correct.

9 MR. HADDON: I am not sure what the  
10 question is, because it is two or three questions'  
11 worth. If you understand the question, you can  
12 answer.

13 THE WITNESS: If I understand your question  
14 as asked, it is going to be a facts and circumstances  
15 issue.

16 MR. JIAMPIETRO: That's all I wanted to  
17 elicit on that issue.

18 BY MR. JIAMPIETRO:

19 Q You noted that Pillsbury, Madison & Sutro  
20 reports had been furnish to you?

21 A Yes.

22 Q Who furnished those reports to you?

1 A Counsel did.

2 Q When you say "counsel," is that your  
3 counsel?

4 MR. HADDON: Referring to me, yes, that's  
5 correct.

6 MR. COLE: For the record, I would like to  
7 note they were made public so there is no issue about  
8 them.

9 MR. HADDON: That's correct.

10 BY MR. JIAMPIETRO:

11 Q Was your review of those reports solely for  
12 your own interest?

13 A My own personal edification.

14 Q I think I have two more questions. You  
15 noted that some of the documents may have been in  
16 off-site files when we were discussing whether or not  
17 a signed copy of the letter discussing the Clintons  
18 financial disclosure forms had been provided to the  
19 committee. And you said you knew you had one of the  
20 signed letters, and you mentioned something about  
21 off-site files?

22 A No, no, no, no, no. What I said was I did

1 not have a signed copy in my files.

2 Q Okay.

3 A Our policy is to keep a -- what we call a  
4 chronology file. Generally we try to put a copy of  
5 every outgoing communication in that chronology  
6 file. I don't know whether or not a copy of that got  
7 into the chronology file. And I know I don't have a  
8 copy in the documents that I retained. There are no  
9 other documents related to Whitewater, that are not  
10 contained in the production that I made to the  
11 Committee.

12 Q And I will note for the record that your  
13 production was quite extensive and quite complete.  
14 So I have no question that you did a very good job of  
15 getting documents to us.

16 You also noted -- and I just want to  
17 clarify on this point -- you noted when I asked you  
18 whether or not you had any contacts with Bruce  
19 Lindsey, you said that you had no contacts during the  
20 course of your work. Did you have any contacts with  
21 Bruce Lindsey with regard to Whitewater at any period  
22 of time that you were involved in preparing the

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1 Whitewater, the report on Whitewater and subsequent  
2 to the preparation of that report?

3 A I had no contact with Mr. Lindsey prior to  
4 October 31, 1993.

5 MR. JIAMPIETRO: Off the record.  
6 (Discussion off the record.)

7 MR. JIAMPIETRO: On record.

8 BY MR. JIAMPIETRO:

9 Q You stated you had no meeting with  
10 Mr. Lindsey prior to October 31, 1993. Did you have  
11 any meetings or telephone conversations with  
12 Mr. Lindsey subsequent to October 31, 1983?

13 A Wait a minute. You just changed the  
14 context. Your first question was any meetings, the  
15 answer is no, prior to October 31. As with  
16 Mr. Kendall, following the heightened interest in the  
17 Whitewater matters, I may have spoken to Mr. Lindsey  
18 prior to October 31, 1993 in the presence of  
19 Mr. Lyons, for the purpose of responding to specific  
20 factual -- pertaining to our report.

21 Q How many contacts would you have had with  
22 Mr. Lindsey?

1 A I have no way to recollect that. It would  
2 be very few.

3 Q Do you have any recollection of the  
4 specific items discussed in those contacts?

5 A No, it was all dealing with the nature of  
6 our report, and the observations that we made in our  
7 report.

8 Q Did you have any contacts with Mr. Lindsey  
9 subsequent to October 31, 1993?

10 MR. HADDON: And I will allow him to answer  
11 that question if it refers to contacts that were not  
12 in the presence of counsel, pursuant to a joint  
13 defense or common interest meeting.

14 THE WITNESS: Yes, there was a meeting with  
15 Mr. Lindsey where Mr. Kendall was also present.

16 BY MR. JIAMPIETRO:

17 Q When did that meeting occur?

18 A My recollection it was in early March of  
19 1994.

20 Q What was the substance of that meeting?

21 MR. HADDON: I instruct him not to answer  
22 pursuant to the privilege as previously invoked,

1 attorney-client privilege.

2 BY MR. JIAMPIETRO:

3 Q Did you have any other meetings with  
4 Mr. Kendall or Mr. Lindsey or other phone  
5 conversations, subsequent to October 31, 1993?

6 A Not to the best of my recollection.

7 MR. HADDON: Let me supplement my statement  
8 of privilege to include the privilege that is -- not  
9 only accountant/client, but attorney-client in the  
10 context of such meetings.

11 MR. JIAMPIETRO: Just for the record -- and  
12 I think this will conclude my analysis and  
13 questions -- Mr. Cole noted previously that there was  
14 a significant correspondence between the analysis  
15 done by Pillsbury, Madison and the Lyons report.

16 I just wanted to ask the following  
17 question: When was the March 22, 1994 letter in  
18 which the \$22,245 correction to the Lyons report  
19 released to the public?

20 MR. HADDON: I don't think we understand  
21 the question. Could you rephrase it.

22 BY MR. JIAMPIETRO:

1 Q We had previously reviewed a letter from  
2 Mr. Lyons to David Kendall dated March 22, 1994,  
3 which describes in detail a correction in the amount  
4 of funds reported in the Lyons report, as being  
5 invested by the Clintons in Whitewater, reducing that  
6 amount from \$68,382 to \$46,600.

7 To the best of your knowledge, do you know  
8 when that letter was made public?

9 A I don't recall specifically. I think it  
10 was on or about that period of time, but I have no  
11 specific recollection as to when it was made public.

12 MR. JIAMPIETRO: I will just end by saying  
13 based on that letter, there was a 32 percent  
14 reduction, after the correction for \$22,245, that was  
15 erroneously included in the final Lyons report. I  
16 just wanted to note that for the record. I am done.

17 EXAMINATION

18 BY MR. COLE:

19 Q Mr. Patten, I, as briefly as possible,  
20 would just like to confirm I have a correct  
21 understanding of your prior testimony with respect to  
22 the series of questions I asked you about the

1 Clintons' personal tax returns.

2 Am I correct in understanding that it is  
3 your view that payments on the Clintons' Whitewater  
4 land acquisition loans by Whitewater Development  
5 Corporation, or the McDougals, did not result in any  
6 tax liability for the Clintons, so long as those  
7 payments were properly recorded on the books and  
8 records of the corporation as a reduction in the  
9 notes payable to the Clintons and the McDougals that  
10 had been recorded on those books when the corporation  
11 was formed?

12 A And to the extent that such obligations  
13 were legal obligations of the corporation to the  
14 individuals.

15 MR. COLE: Thank you.

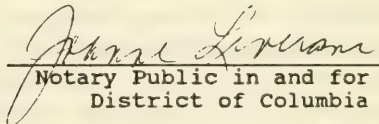
16 MR. JIAMPIETRO: I think that will complete  
17 the deposition for today.

18 (Whereupon, at 5:41 p.m., the deposition  
19 was concluded.)  
20  
21  
22

-----  
LESLIE A. PATTEN



I, JOANNE LIVERANI , the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires      JULY 31, 2000

**DEPOSITION OF WEBSTER L. HUBBELL  
IN RE: S. RES. 120**

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**TUESDAY, JUNE 4, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of WEBSTER L. HUBBELL, called for examination pursuant to notice of deposition, at 10:00 a.m. in Room 640-A of the Hart Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.  
Majority Chief Counsel  
NEAL E. KRAVITZ, Esq.  
Minority Principal Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

JOHN W. NIELDS, JR., Esq.  
LAURA S. SHORES, Esq.  
Howrey & Simon  
1299 Pennsylvania Avenue, NW  
Washington, DC 20004-2402  
On behalf of the Deponent.

## CONTENTS

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**WITNESS****EXAMINATION****Webster L. Hubbell**

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## P R O C E E D I N G S

Whereupon,

WEBSTER L. HUBBELL

was called as a witness and, having first been duly sworn, was examined and testified as follows:

MR. GIUFFRA: Good morning, Mr. Hubbell.

My name is Robert Giuffra. I am Majority chief counsel of the Banking Committee. Behind me is Jennifer Swartz who is a litigation associate for the Majority staff. And to my right is Neal Kravitz who is Minority principal deputy special counsel.

This is a deposition that is being conducted pursuant to Senate Resolution 120. This resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, the Arkansas Development Finance Authority, and other related matters.

No decision has been made as to whether this deposition will be used in any public hearing or

4

just put into our reports and we will know after the fact so I don't want to foreclose either possibility. But there is a possibility you will never be asked to come testify again --

THE WITNESS: Thank you.

MR. GIUFFRA: -- before our Committee.

The format, as you're aware from previous occasions, I will be asking questions and Mr. Kravitz will be asking questions. You have a right to be represented by counsel and I see you have chosen to be represented by Mr. Nields. And if he would state an appearance for the record.

MR. NIELDS: John Nields from Howrey & Simon, counsel for Mr. Hubbell. And Ms. Laura Shores is with me.

MR. GIUFFRA: As you know from the past depositions, the deposition will be treated as Committee confidential until either hearings or until it is put into the report. You will have an opportunity to review the transcript, make any corrections you want to on the errata sheet. And if counsel wishes to object, counsel's objections to



1 form will be noted.

2 And then with regard to objections as to  
3 relevance or privilege, there is a procedure that  
4 requires us to go to Chairman D'Amato for a ruling,  
5 which we might do.

6 Do you or your counsel have any questions  
7 before we begin?

8 THE WITNESS: No.

9 MR. NIELDS: No.

10 EXAMINATION

11 BY MR. GIUFFRA:

12 Q I would like to focus this deposition to  
13 just several matters, and try to get it over as  
14 promptly as possible. I would like to direct your  
15 attention to July 27, 1993, which would be seven days  
16 after Mr. Foster's death.

17 A Monday.

18 Q Yes.

19 MR. KRAVITZ: Did you say Monday?

20 THE WITNESS: I said Monday.

21 MR. KRAVITZ: I don't think it is a  
22 Monday. I think it is Tuesday.

1 MR. GIUFFRA: I think it is a Tuesday.

2 THE WITNESS: He died on a Tuesday, so the  
3 27th would be a Monday.

4 MR. KRAVITZ: Both the 20th and 27th are  
5 Tuesdays and we can take judicial notice.

6 MR. NIELDS: It is a question whether it is  
7 correct judicial notice. It sounds correct.

8 BY MR. GIUFFRA:

9 Q Do you recall speaking with White House  
10 counsel Bernard Nussbaum on July 27, 1993?

11 A I wouldn't be surprised that I did, but I  
12 don't have any specific memory of it.

13 Q Did you ever discuss with Mr. Nussbaum the  
14 discovery of a note in Mr. Foster's briefcase?

15 A At some point, yes.

16 Q Do you recall when that would have been?

17 A No. I recall that it was after I saw the  
18 handwriting -- I mean, not the handwriting, but a  
19 copy of the note.

20 Q When did you see a copy of the note?

21 A When -- sometime -- I can't give you the  
22 precise date, probably others could. I learned that

1 there was -- had been turned over to the Attorney  
2 General, other Deputy Attorney General, what had been  
3 notes of Vince Foster that may have reflected his  
4 mental state, and I went to Phil and asked him to see  
5 a copy of it.

6 Phil checked with Dave Margolis, who was  
7 helping him on this matter, and he said -- Dave said  
8 it was okay. And I went to Dave's office, to  
9 actually look at the transcript or what I thought was  
10 the note. As it turned out, it wasn't a note, it was  
11 somebody else's transcription of the note.

12 Q This would be Phil Heymann who was the  
13 Deputy Attorney General at the time?

14 A Yes.

15 Q And you were then associate --

16 A Associate Attorney General.

17 Q Was it a handwritten transcription of the  
18 note?

19 A Yes.

20 Q Do you recall whether this was before or  
21 after news reports of the discovery of the note?

22 A I think it was almost simultaneous. I

1 remember being upset that there -- that there was  
2 apparently a note and I didn't know about it. And I  
3 remember it being an issue as to whether it would be  
4 released to the press. Whether it was leaked to the  
5 press -- "leaked" is the wrong word, but how the  
6 press knew about it before I did, I don't know, but I  
7 know there was an issue at Justice about whether it  
8 would be released to the press.

9 Q So it is your best recollection you saw  
10 this handwritten transcription of the note prior to  
11 the release of the text of the note --

12 A Right.

13 Q -- to the public?

14 A That's correct.

15 Q And you would have seen this handwritten  
16 transcription at a time when the Justice Department  
17 officials were trying to decide how to handle the  
18 question of public disclosure of the text of the  
19 note?

20 A That's correct.

21 Q Now, did you discuss with Mr. Nussbaum the  
22 discovery of this note prior to the time when you

1 were shown a copy of the text of the note at the  
2 Justice Department?

3 A No.

4 Q So you never had any discussions with  
5 Mr. Nussbaum about the circumstances surrounding --  
6 strike that.

7 At least as of the time you were shown the  
8 text of the note, you never had any discussions with  
9 Mr. Nussbaum about anything surrounding the  
10 circumstances?

11 A That's correct.

12 Q The discovery of the note?

13 A After the fact I did.

14 Q And what do you recall about the  
15 conversation with Mr. Nussbaum about the  
16 circumstances surrounding the discovery of the note?

17 A I knew by the time I talked to Bernie that  
18 it had been found in Vince's briefcase, that it had  
19 been torn up. I mean, it was in pieces, is what I  
20 meant.

21 Q Did you know that the note was in pieces  
22 from press accounts, or had you been told that by

---

10

1 someone within the Administration?

2 A Either Phil Heymann or Dave Margolis told  
3 me that. It was the first time I learned it. It may  
4 have been in the press by the time I talked to  
5 Bernie.

6 Q Do you recall anything further about the  
7 conversation you had with Mr. Nussbaum about the  
8 circumstances surrounding the discovery of the note?

9 A No.

10 Q Did you discuss with Mr. Nussbaum in any  
11 way why he failed to identify or locate the note when  
12 he first reviewed the contents of Mr. Foster's office  
13 on July 22, 1993?

14 A Not with Bernie, no.

15 Q Did you discuss that subject with anyone?

16 A Yes.

17 Q Who did you discuss it with?

18 A Either Mr. Heymann or Mr. Margolis or  
19 both. And the reason I am a little bit vague about  
20 it is that I went to Phil to ask him about the note.  
21 He took me to Dave Margolis, and he then left, but  
22 there was -- because of the circumstances of my

1 believing at first that it was not -- not a -- it was  
2 a forgery, they -- Phil came back in, so he was in  
3 and out. And so I -- so I can't tell you when I  
4 first learned about it, whether Phil was in the room  
5 or not.

6 Q But you think you learned --

7 MR. NIELDS: Can I make sure I understand  
8 what he means by the word "forgery."

9 MR. GIUFFRA: I was going to have her read  
10 that back and ask him about that. Why don't you read  
11 his answer.

12 (The reporter read the record as requested.)

13 BY MR. GIUFFRA:

14 Q In your answer you just indicated that you  
15 believed the note was a forgery; is that right?

16 A I believed what I was handed by Dave was  
17 not Vince's handwriting, and so when I read it, I  
18 recognized words, but I recognized that it wasn't  
19 Vince's handwriting. So I said Dave, I hate to do  
20 this, but this isn't Vince's handwriting.

21 And he at first seemed taken aback and  
22 shocked, and then he came back and said, it is in his

1 handwriting. This is a transcript by the Park  
2 Policeman of the note, so you are not reading Vince's  
3 note, you are reading a handwritten transcript and  
4 that's what I mean by forgery.

5 Q At that time Mr. Margolis told you the note  
6 was on torn up scraps of paper?

7 A Either that or he had already told me that  
8 and I thought it was pieced together. I am sure, as  
9 you ask the question, that, at some point after I  
10 looked at the note, they told me it was torn up in  
11 pieces and this was a transcript.

12 Q But presumably during that same  
13 conversation in which you were first shown the  
14 transcription of the note; correct?

15 A Right.

16 Q What did Mr. Margolis say to you about  
17 Mr. Nussbaum's failure to locate the note on July 22,  
18 1993 when he reviewed the contents of Mr. Foster's  
19 office?

20 A I think initially they were upset that it  
21 wasn't found initially as part of the overall --  
22 being upset about the circumstances of looking at



1 the -- reviewing the office. But they explained to  
2 me what had happened, and said that it would -- it  
3 had been torn up and it was in the folds of a  
4 briefcase, and they didn't -- that somebody had  
5 looked in it and didn't see it. And so --

6 Q Did Mr. Margolis specifically say to you  
7 that the scraps of paper were within the folds of  
8 briefcase?

9 A Either Dave or Phil explained to me that  
10 that's where they found -- that it was found.

11 Q They said -- someone in the White House  
12 said the note was found?

13 A Yes.

14 Q You just indicated you were aware that  
15 there had been some issue surrounding the  
16 circumstances of the review of the documents in  
17 Mr. Foster's office; right?

18 A Right.

19 Q Did you discuss that with anyone at the  
20 Department of Justice?

21 A Phil Heymann.

22 Q When did you discuss it with Mr. Heymann?

1 A I had -- the best of my memory is, I  
2 believe at some point I knew that there was going to  
3 be a review of the documents. And then when I  
4 returned from Little Rock after the funeral -- and I  
5 stayed a few extra days -- Phil had told me that he  
6 had had some difficulty with the way the office had  
7 been reviewed. I think I've testified about this.

8 Q Yes, that's right.

9 Do you think you returned -- strike that.

10 Let's go off the record for a minute.

11 (Discussion off the record.)

12 MR. GIUFFRA: Back on the record.

13 BY MR. GIUFFRA:

14 Q Mr. Foster's funeral was on Friday, July  
15 23; is that right?

16 A Right.

17 Q When do you best recollect that you  
18 returned to Washington?

19 A My recollection is that I returned Monday  
20 morning. I may be wrong, I could be off a day, but I  
21 think I returned that Monday morning.

22 Q Which would be July 26th.

1 A I mean, I really could be off a day.

2 Q Did you speak with anyone on July 26 about  
3 the fact that Steve Neuwirth -- strike that.

4 Did you speak with anyone on July 26 about  
5 the fact that scraps of paper had been found in  
6 Mr. Foster's briefcase?

7 A No. If you are telling me that I met  
8 with -- whatever day I met with Phil and Dave,  
9 whatever day I did that, was the first I learned  
10 about the -- officially about the note, and learned  
11 that it had been torn up, now, that -- I don't  
12 remember whether I came back on Sunday or Monday.

13 I believe I came back Monday morning. If I  
14 came back Monday morning, when I left on Monday  
15 morning, I would get back in late afternoon here.

16 But whenever I met with Phil was the first  
17 I knew of the note, for sure. Somebody had told me  
18 that they believed that -- I hate to call it a note,  
19 that's one of my problems. I don't like calling it a  
20 note.

21 When I found out about the piece of paper,  
22 I went to Phil. Phil -- I looked at the transcript,

1 I learned about the circumstances, and that's when I  
2 first learned about this.

3 Q But do you have any recollection as to how  
4 you -- strike that.

5 You indicated you officially learned about  
6 the note from Mr. Heymann. Unofficially how did you  
7 learn about the note?

8 A Somebody came to my office or called me and  
9 said they had found a note or found some notes of  
10 Vince's. I believe it was one of my -- I think it  
11 was Nancy McFadden, who told me it was in the press,  
12 or the press was asking questions, or word was  
13 getting out that there was a note.

14 Q Now, do you believe as of the time when you  
15 spoke to Mr. Heymann, there had already been press  
16 comment on the fact that a note had been discovered?

17 A No, I think what -- you usually at Justice  
18 knew about a day ahead that something was up, you  
19 know, that Carl Stern was starting to get inquiries  
20 or something like that. And it would come up to my  
21 office through either Carl's office or some way else  
22 that there had been found this piece of paper --

- 1 Q So --  
2 A -- but it wasn't in the press.  
3 Q So your best recollection is that Nancy  
4 McFadden would have advised you of the fact that  
5 there were press inquiries about the possible  
6 discovery of scraps of paper of Mr. Foster?  
7 A Either that or she had heard from somebody  
8 that there had been scraps -- a scrap of paper with  
9 Vince's state of mind.  
10 Q It is your testimony that you did not  
11 discuss the fact that scraps of paper had been found  
12 in Mr. Foster's briefcase with Bill Kennedy on July  
13 27th?  
14 A July 27th, when is that?  
15 Q That's a Tuesday.  
16 A It could be that, after I'd heard from  
17 Phil, I called Bill.  
18 Q Do you believe you spoke to Phil early in  
19 the day or late in the day?  
20 A Early.  
21 MR. KRAVITZ: Which day?  
22 MR. GIUFFRA: July 27th.
- 

- 1 THE WITNESS: Whatever that day is.  
2 BY MR. GIUFFRA:  
3 Q Whatever day you spoke to Phil, it would  
4 have been early in the day you spoke to him?  
5 A Right.  
6 MR. KRAVITZ: Can I make one -- this may  
7 help you recall whether your conversation with  
8 Mr. Heymann took place on July 26, July 27th or some  
9 other time. I mean --  
10 MR. GIUFFRA: I don't think you should  
11 testify.  
12 MR. KRAVITZ: I am not testifying. I want  
13 to make sure the record is not misleading. There is  
14 uncontradicted testimony in the Committee's record  
15 that it was --  
16 MR. GIUFFRA: You are testifying.  
17 MR. KRAVITZ: I am not testifying, Bob. I  
18 am trying to make this record less misleading than it  
19 could be interpreted as being.  
20 There is uncontradicted testimony in this  
21 record -- and you are not going to disagree with  
22 this, Bob -- that it was late in the day on July

1 27th, 1993 that White House officials first showed  
2 Mr. Foster's writing to Attorney General Reno and  
3 Deputy Attorney General Phil Heymann.

4 So that information, I mean that  
5 information is clear, uncontradicted on the record.

6 THE WITNESS: If it was Tuesday, then it  
7 would be Wednesday.

8 BY MR. GIUFFRA:

9 Q So you think it was Wednesday morning you  
10 probably spoke to Mr. Heymann, which would be the  
11 28th?

12 A I would suspect that's true. It was  
13 sometime after the note was turned over.

14 Q To the Justice Department?

15 A Right. What, the one thing that is certain  
16 in my mind is that going down to Dave -- Phil, being  
17 upset, going to Dave's office and being handed the  
18 note and being scared to death when I saw it wasn't  
19 Vince's handwriting, and they were scared to death  
20 when I told them it wasn't Vince's handwriting.  
21 Okay? That's the one thing I remember. Now, what  
22 day that was, I can't tell you for sure.

---

20

1 Q Let me show you a document which bears  
2 Bates number GRO 466; these are your message pads.  
3 There is a telephone call on July 27th, 2:30 p.m.  
4 from Mrs. Clinton. Did you return that call to  
5 Mrs. Clinton?

6 A I don't have any memory of it. But there  
7 were a few calls that she made that I didn't return  
8 as soon as I could.

9 Q Do you recall speaking to Mrs. Clinton on  
10 the 27th of July, 1993?

11 A No. I mean, I am trying to tell you, I  
12 don't deny I didn't do it. I am sure I did. But I  
13 don't know what I said. I don't know what it was  
14 about.

15 Q Did you ever have any conversation with  
16 Mrs. Clinton about the discovery of the note in  
17 Mr. Foster's briefcase?

18 A We talked about the contents of the note.  
19 We never talked about the discovery of the note.

20 Q When do you think you spoke with  
21 Mrs. Clinton about the contents of the note?

22 A I don't know.



1 Q It would have been after you had spoken to  
2 Mr. Heymann; right?

3 A Yes.

4 Q Would it have been substantially after  
5 that?

6 A I don't know.

7 THE WITNESS: Do you all have my calendar?  
8 I may have my calendar, if it would help.

9 MR. GIUFFRA: Let's go off the record for a  
10 second.

11 (Discussion off the record.)

12 BY MR. GIUFFRA:

13 Q Now, would your calendar reflect all the  
14 meetings you would have attended on a particular day?

15 A No.

16 Q Now --

17 A I mean, it could at times, but it also  
18 couldn't.

19 Q Do you recall visiting the White House,  
20 after your return from Little Rock for Mr. Foster's  
21 funeral?

22 A No, I have been asked about that recently,

---

22

1 and I remember -- I remember that I was -- let me see  
2 if I can phrase this right.

3 MR. KRAVITZ: Can you read back the  
4 question because I am not sure that the question was  
5 all that clear.

6 (The reporter read the record as requested.)

7 MR. KRAVITZ: Do you mean on the day he  
8 returned or anytime after he returned?

9 MR. GIUFFRA: I will rephrase the question.

10 BY MR. GIUFFRA:

11 Q In the week after your return from  
12 Mr. Foster's funeral in Little Rock, do you recall  
13 ever going to the White House?

14 A Specifically, no. I remember that I had to  
15 go to the White House to tell Hillary about what had  
16 gone on after they left after the funeral, but I  
17 don't have any memory of doing it.

18 Q What do you mean you had to go to the White  
19 House to talk to Hillary about what went on after the  
20 funeral?

21 A We had lost our best friend, and I remember  
22 that somebody had asked me to come by the White House

1 when I got back, to tell them about what had happened  
2 after they left. They left immediately after the  
3 funeral.

4 We -- as Southerners, we have large long  
5 funerals and we get together and drink and eat and  
6 talk and do it for days. And Hillary had missed that  
7 grieving process, and I remember my wife saying,  
8 Hillary needs to talk to you. She needs to  
9 understand who was there and things of that sort.

10 It is part of the grieving process, and I  
11 remember that, but I don't remember going to the  
12 White House. But I remember my wife saying you need  
13 to talk to Hillary.

14 Q So it would be your best recollection that  
15 sometime the week after Mr. Foster's funeral you went  
16 to the White House and spoke to Mrs. Clinton about  
17 the events that transpired after the actual funeral  
18 service?

19 A I remember going. I don't remember talking  
20 to Hillary. I am sure I did. But I don't have any  
21 memory of talking to her about it.

22 Q But you recall going to the White House?

---

1 A I remember the urge and the need to go.  
2 But the actual event I don't remember. But I am sure  
3 I did. I am not -- I just don't have any memory of  
4 the actual event. It is not like going to a meeting  
5 or going to a -- you know, a birthday party. I'm  
6 sure I was there, but I just don't have a memory of  
7 it.

8 Q Do you have any recollection as to whether  
9 this phone call you had with Mrs. Clinton on July  
10 27th might have been related to a request from her  
11 that you advise her as to what transpired after  
12 Mr. Foster's funeral service?

13 MR. KRAVITZ: Objection to the form of the  
14 question.

15 THE WITNESS: I don't have any memory about  
16 what the phone call was about. I could have already  
17 visited with her on the 26th. I just don't know.

18 BY MR. GIUFFRA:

19 Q You understood that question; right,  
20 Mr. Hubbell?

21 A Yes.

22 MR. GIUFFRA: We don't need two defense

1 counsel here.

2 MR. KRAVITZ: Can we go off the record for  
3 a second.

4 (Discussion off the record.)

5 BY MR. GIUFFRA:

6 Q Now, you know Susan Thomases; right?

7 A Yes.

8 Q Do you recall speaking with Ms. Thomases at  
9 any time the week after Mr. Foster's funeral?

10 A I don't recall talking to her. I would be  
11 surprised if I didn't, but I don't recall talking to  
12 her.

13 Q Do you know Diane Blair?

14 A Yes.

15 Q Do you recall speaking with Ms. Blair at  
16 any time in the week after Mr. Foster's funeral?

17 A Same. If she was in town, and I suspect  
18 she was, I would have talked to Diane, but I don't  
19 recall any specifics.

20 Q Why do you suspect Ms. Blair would have  
21 been in Washington during the week after Mr. Foster's  
22 death?

1 A Diane was working in the Brookings  
2 Institute. She was a fellow there and she spent a  
3 lot of time there.

4 Q Do you know Mr. Bob Barnett?

5 A Yes.

6 Q He is a lawyer at Williams & Connolly?

7 A Yes.

8 Q Did you ever speak to Mr. Barnett at any  
9 time in the week after Mr. Foster's death?

10 A I think Bob was at the funeral. I am not  
11 100 percent on that, but I think Bob may have been at  
12 the funeral, so I am sure I did, if he was at the  
13 funeral. I don't remember any specifics, but I think  
14 Bob was at the funeral. I think I remember him at  
15 the grave site.

16 Q Do you recall speaking to Mack McLarty at  
17 any time in the week after Mr. Foster's funeral about  
18 the discovery of the note in Mr. Foster's briefcase?

19 A I don't think I ever talked to Mack about  
20 the discovery of the note. I don't -- I certainly  
21 don't remember doing so.

22 Q Let's just focus on the period June, July

1 1993. With what frequency would you have entered the  
2 living quarters of the White House?

3 A The living quarters?

4 Q Yes.

5 A I would say infrequently, I would say. I  
6 would say on occasion, but infrequently.

7 Q Once a week, once a month?

8 A It is hard to say. There were evenings  
9 where movies were watched. On occasion I might visit  
10 with Kaki or Diane there, when even the Clintons  
11 weren't there. And I can't tell you if I played golf  
12 during those periods of time with the President or  
13 not. I didn't keep a record of when I played golf.

14 Q Kaki would have been the decorator at the  
15 White House?

16 A Yes.

17 Q But actually, say, visiting the second  
18 floor of the White House in this period June, July  
19 1993 would that have been a frequent event?

20 A Not a frequent event, no.

21 Q Once, twice a month?

22 A Yes. It really depended on the

1 circumstances, but it wasn't often that I went up to  
2 the second floor.

3 Q Let me show you a document we received from  
4 the White House, bears Bates number S 20921. This is  
5 a record of movements to and from the First Family's  
6 living quarters at the White House. And this record  
7 indicates that at 6:29 p.m. on July 27th, you went up  
8 to the White House residence, and at 8:19, you came  
9 down. Just take a look at that.

10 A Okay.

11 Q Now, does this record refresh your  
12 recollection that you visited the second floor of the  
13 White House on July 27, 1993?

14 A No.

15 Q Do you have any reason to believe the  
16 record would be inaccurate?

17 A No, I told you I thought I did come to the  
18 White House at some point to talk to Hillary.

19 Q And you think you probably spoke to  
20 Mrs. Clinton sometime within a matter of days after  
21 Mr. Foster's funeral?

22 A Yes.



- 1 Q Can you give me any estimate as to the  
2 number of days it would have been?  
3 A It was when I got back.  
4 Q Two or three days from when you got back?  
5 A Yes.  
6 Q If it would be the only day you would have  
7 an entry to the second floor, this is presumably the  
8 day it might have happened?  
9 A I believe it was the day.  
10 Q You think it was the day?  
11 A I do. But I don't have any memory of it,  
12 but I look in my calendar, I look at that and  
13 certainly there is every indication it is the day I  
14 was there.  
15 Q Which would be July 27?  
16 A Yes.  
17 Q You believe, based on your calendar,  
18 because the calendar seems to have an open time  
19 period after --  
20 A Right.  
21 Q -- 6:15 p.m. on the 27?  
22 A Actually, you want to know why I think it

- 1 is that? I see 8:00, Nancy Hernreich's birthday, and  
2 I remember being late to Nancy's birthday and meeting  
3 my wife there, and which is usually an indication  
4 that I was somewhere else and I met her there. And I  
5 remember something about I came from the White House  
6 to Nancy's birthday.  
7 That's what makes me think that I was in  
8 the White House that evening. So I don't doubt the  
9 records, I just don't have any memory of that  
10 meeting.  
11 Q But in view of this record and also your  
12 calendar and your recollection with regard to  
13 Ms. Hernreich's birthday, you suspect or you believe  
14 that probably it was on July 27th that you would have  
15 told Mrs. Clinton what happened at the funeral?  
16 A Yes.  
17 Q Do you recall anything about what you might  
18 have told Mrs. Clinton about what had occurred at the  
19 funeral?  
20 A I remember having a conversation with  
21 Hillary about Vince's financial affairs which would  
22 likely have been this meeting. But whether it was or

1 not, I can't tell you for sure. You know, how he  
2 left Lisa and the kids, and I remember talking about  
3 who came over to the house that evening.

4 When I say "the house," the house that Lisa  
5 was staying at.

6 Q Which would be after the funeral?

7 A After the funeral. And I remember talking  
8 to her about how the kids were doing, how Lisa was  
9 doing, how Sheila was doing, who came by, things of  
10 that sort. The things that I had been able to  
11 participate in that she hadn't.

12 Q Do you recall whether anyone else was  
13 present while you were discussing these matters with  
14 Mrs. Clinton?

15 A No.

16 Q Do you believe -- do you have any reason to  
17 believe that Susan Thomases would have been present  
18 when you were discussing these matters with  
19 Mrs. Clinton?

20 A The reason I have to believe that she was  
21 was what you handed me.

22 MR. NIELDS: Wait a minute.

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1 THE WITNESS: Oh, she went down --

2 MR. GIUFFRA: Go off the record.

3 (Discussion off the record.)

4 BY MR. GIUFFRA:

5 Q Mr. Hubbell, you are aware of a White House  
6 WAVES record indicating that you left the White House  
7 with Ms. Thomases at the same time on July 27, 1993?

8 MR. KRAVITZ: Objection; that's not what he  
9 said. He said he is aware of a record that they left  
10 at the same time. I am not sure he said there was a  
11 record that they left together. I am not sure there  
12 is a record that can show that.

13 MR. GIUFFRA: I am rephrasing the question.

14 BY MR. GIUFFRA:

15 Q You are aware of a WAVES record indicating  
16 you and Ms. Thomases left the White House at the same  
17 time on July 27; right?

18 A That's right.

19 Q And we can represent to you that our best  
20 information is that this document which I have shown  
21 you, bearing Bates number S 20921, is an error and  
22 that in fact Ms. Thomases went down from the White

1 House living quarters at 8:19 p.m., which was the  
2 same time that you left.

3 Do you have any recollection of seeing  
4 Ms. Thomases at the White House on the 27th?

5 A No, it doesn't surprise me, but I don't  
6 have any recollection of it.

7 Q Why does it not surprise you you might have  
8 seen Ms. Thomases on the 27th?

9 A She was there on occasion. She was a  
10 friend of Hillary's and Bill's -- the President's.

11 Q Did you ever discuss with Ms. Thomases the  
12 circumstances surrounding the discovery of the note  
13 in Mr. Foster's office?

14 A The note?

15 Q Yes.

16 A No.

17 Q Now, it is your testimony you learned of  
18 the note on July 28th. The Committee has received  
19 evidence indicating that Mrs. Clinton learned of the  
20 discovery of the note on July 26th.

21 Do you have any explanation for why  
22 Mrs. Clinton would not have advised you of the

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1 discovery of the note on the 27th when you met with  
2 her?

3 A No.

4 Q Have you ever asked her why she didn't tell  
5 you of the discovery of the note on July 27th?

6 A I have asked Bernie why they didn't tell me  
7 about the discovery of the note.

8 Q And what did Bernie say about that?

9 A He said they wanted to keep me out of it.

10 Q Did he indicate why they wanted to keep you  
11 out of it?

12 A Because I think that was his general  
13 understanding with Phil, that everybody would keep me  
14 out of any investigation.

15 Q When he indicated they wanted to keep you  
16 out of it, did he indicate that also included the  
17 First Lady?

18 A No, just -- they being the White House, was  
19 the way I understood it. I didn't -- I didn't hear  
20 it identified as being the President, the First Lady,  
21 Bernie, or anybody else. But I did have a  
22 conversation with Bernie about it because I wanted to

1 know why nobody called me.

2 Q Do you recall when this conversation with  
3 Mr. Nussbaum occurred?

4 A Sometime after my conversation with Phil,  
5 and Dave. Which I think we pinpointed as the 28th or  
6 as close as we can.

7 Q You would consider the note to have been an  
8 important event, the discovery of the note to have  
9 been an important note for friends of Mr. Foster  
10 trying to ascertain why he might have killed himself?

11 A Right. Although I have -- I also have a  
12 different viewpoint in that I was talking to the  
13 family and I understood their need for privacy and  
14 how they didn't want it public. I had conversations  
15 about that a lot.

16 Q This would be after you were advised by  
17 Mr. Heymann of the discovery of the note?

18 A Yes.

19 Q Were these conversations you had on July 28  
20 and 29?

21 A I am sure they were.

22 Q Do you recall speaking with Mrs. Clinton

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1 about the note on July 28 or July 29?

2 A No.

3 Q Do you recall speaking with the President  
4 about the note on July 28 or July 29?

5 A I don't think I ever talked to the  
6 President about the note. I don't remember it;  
7 that's for sure.

8 Q Did you ever discuss with Jim Blair the  
9 note?

10 A I could have, but I don't remember it. We  
11 talked about the contents of the note with a lot of  
12 people, you know. I mean, it was very telling. I  
13 hate calling it a note. Can we call it something  
14 else?

15 Q Scraps of paper, the paper, the writing?

16 A Vince Foster's writings about what was  
17 bothering him.

18 Q Did you have any discussions with anyone  
19 about the fact that there might be political  
20 ramifications or public relations ramifications from  
21 the discovery -- the disclosure of the contents of  
22 Fosters's writing?



1 A Political ramifications?

2 Q Right. There might be adverse press for  
3 the White House if the contents of the writing were  
4 disclosed?

5 A No, I thought it would be very adverse to  
6 the press.

7 Q Other than discussions about the fact that  
8 the Foster family wanted to keep the contents of the  
9 writing private, do you recall discussions of any  
10 other factors that went into whether the note  
11 should -- the contents of the writing should be  
12 publicly disclosed?

13 A I remember having several conversations  
14 with Phil about the family's concern of privacy, and  
15 that they should realize that they were going to  
16 upset the family tremendously. I wanted him to  
17 understand that. That is the only conversation I had  
18 about the public disclosure of the note. Nothing  
19 about the contents of the note at all.

20 Q Do you have any explanation why  
21 Mrs. Clinton would not have advised you of the  
22 discovery of Foster's writing on 27th --

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1 A I remember that Bernie --

2 Q -- other than what Bernie said?

3 A Well, let me --

4 Q Go ahead.

5 A Bernie also told me they were trying to  
6 notify Lisa before there was any disclosure of a  
7 note. And I don't know when they were able to get in  
8 touch with Lisa; you will have to tell me when they  
9 told Lisa. I don't think they told anybody about the  
10 note until they talked to Lisa.

11 MR. GIUFFRA: Let's go off the record.

12 (Discussion off the record.)

13 MR. GIUFFRA: Why don't you read back the  
14 last question.

15 (The reporter read the record as requested.)

16 THE WITNESS: And I would add to that, also  
17 the President. And I don't know when they told the  
18 President.

19 MR. GIUFFRA: We have learned that they  
20 told the President sometime on the afternoon of the  
21 27th.

22 BY MR. GIUFFRA:

1 Q Mr. Hubbell, let me turn you briefly to the  
2 night of Mr. Foster's death. You were at  
3 Mr. Foster's House; right?

4 A Yes, I mean after we got notice, yes.

5 Q You made an effort at Mr. Foster's house to  
6 look for a possible suicide note?

7 A Yes.

8 Q You personally?

9 A Yes.

10 Q About how much time did you spend looking  
11 for a suicide note?

12 A I have no idea. I mean, that was on  
13 everybody's mind, Lisa's especially.

14 Q Looking for some explanation?

15 A Looking for explanations. We also -- so it  
16 would -- we would have looked around. And I believe  
17 I talked to people in the White House about whether  
18 there was a note on his desk. But -- so, yes.

19 Q Who would have known that you were  
20 interested in trying to locate a note on July 20?

21 A Lisa. Bill Burton at the White House.  
22 Maybe David Watkins, maybe Mack. Sheila and Beryl,

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1 because something came up about -- so that's why I  
2 know.

3 Q What do you mean, something else came up  
4 about a note?

5 A At some point, I don't think it was that  
6 night, but maybe the next day, we understood that  
7 Vince had sent some documents to his mother the day  
8 before he died. And we thought there was a  
9 possibility that he had sent a note to his mom. And  
10 so we were worried for Vince's mother that she would  
11 get it and be in Hope by herself and get the mail,  
12 and she would open an envelope from Vince and there  
13 would be a note, and it would be -- she was elderly,  
14 didn't want anything to happen to her.

15 So I had a conversation with Sheila and  
16 Sheila arranged for somebody to be with her mom when  
17 the mail came, certainly the envelope from Vince, to  
18 make sure there wasn't a note in there.

19 Then when I got to Little Rock and talked  
20 to Sheila, I found out there wasn't a note in the  
21 envelope.

22 Q What was in the envelope?

1 A Some legal papers. I think he was trustee  
2 of some trust or things of that sort, maybe some  
3 deeds. I really -- I never saw what was in the  
4 envelope, but that's what I was told.

5 Q These were documents relating to his  
6 mother's financial matters?

7 A Right.

8 Q Now, was Mr. Nussbaum aware you were  
9 looking for a note on July 20?

10 A You know, I have gone over this at least a  
11 hundred times with people, and then also I probably  
12 daily, I don't remember -- I am sure I talked to  
13 Bernie that night, but I just don't have any  
14 recollection of it. If I did, I would have said  
15 Bernie, was there any note on his desk. I know I  
16 would have asked, but I don't remember.

17 Q Was Mrs. Clinton aware of your interest in  
18 trying to locate a possible suicide note?

19 A I think I've testified I am sure I talked  
20 to Hillary, but I don't remember talking to Hillary  
21 that night. There was -- the first conversation I  
22 remember was when I got to Little Rock, and I -- I'm

1 sure at that point I told her about the possibility  
2 of a note coming to Mrs. Foster.

3 Q Let's go through these documents. We know  
4 Mr. Nussbaum tried to reach you on the 27th and it is  
5 your testimony there was no discussion of the note if  
6 you spoke to him?

7 A If he spoke to me, there wasn't any  
8 discussion about the note.

9 Q We know he knew about the note on 27th. We  
10 now know you met with Mrs. Clinton on the 27th.

11 A I believe I met with Mrs. Clinton. I don't  
12 know that, okay.

13 Q I believe you met with Mrs. Clinton on the  
14 27th?

15 A The thing you showed me doesn't show her  
16 being in the residence. That's why I asked you  
17 whether she was there or not.

18 Q Well --

19 A It is possible I went there and she never  
20 got there, so I don't know. That's why I am asking.

21 Q This document indicates the First Lady --  
22 and it just has the second floor, and it doesn't have

1 an up or down time, which I am not an expert on these  
2 records -- would indicate she was probably there the  
3 whole day.

4 MR. KRAVITZ: My understanding is there is  
5 no entries for up or down that day. My understanding  
6 is she was there the whole day, assuming she started  
7 there that day. She never left and the fact that it  
8 indicates second floor, I think that means she was in  
9 the residence.

10 THE WITNESS: I don't know what it means.

11 MR. GIUFFRA: I believe we had a White  
12 House representation she was there the entire day on  
13 the 27th.

14 THE WITNESS: If I went there and went to  
15 the second floor and she was there, I would be  
16 shocked if I didn't meet with her. I just don't have  
17 any memory.

18 BY MR. GIUFFRA:

19 Q You don't find it somewhat strange she  
20 wouldn't mention to you the fact that a note had been  
21 discovered, or at least a writing by Mr. Foster had  
22 been discovered in his briefcase?

1 A Not if Bernie told her not to.

2 Q So your belief is that Mr. Nussbaum  
3 probably told the First Lady not to alert you to the  
4 discovery of this note?

5 MR. NIELDS: Wait a minute.

6 THE WITNESS: I don't know.

7 MR. KRAVITZ: Wait, don't answer.

8 THE WITNESS: I don't know what Bernie told  
9 her. You asked me to surmise as to why she wouldn't  
10 have told me, and that's probably the best  
11 explanation I can think of.

12 MR. GIUFFRA: Off the record.

13 (Discussion off the record.)

14 BY MR. GIUFFRA:

15 Q Now, other than your conversation with  
16 Mr. Heymann in which he indicated to you that he and  
17 Mr. Nussbaum had made the judgment that you should be  
18 kept out of the loop with regard to the discovery of  
19 the note, did you ever discuss the fact that there  
20 had been discussion of keeping you out of the note  
21 with anybody else?

22 A Mr. Nussbaum.



1 Q Anyone else?

2 A And Mr. Margolis could have been there when  
3 I talked to Phil.

4 Q Anyone else?

5 A Not that I remember.

6 Q Did Mr. Nussbaum ever indicate to you that  
7 he told the First Lady not to tell you about the  
8 discovery of Mr. Foster's writing?

9 A No.

10 Q Let's turn to another subject.

11 MR. KRAVITZ: Can we take a two-minute  
12 break?

13 MR. GIUFFRA: Sure.

14 (Recess.)

15 BY MR. GIUFFRA:

16 Q Mr. Hubbell, I would like to show you a  
17 document you have previously seen, which bears the  
18 Bates number RS 2899. This is a letter from Seth  
19 Ward, your father-in-law, to James McDougal, and it  
20 is dated September 24, 1985.

21 MR. NIELDS: Is this a new topic?

22 MR. GIUFFRA: Yes.

1 MR. NIELDS: Different from the ones you  
2 told me you were going to go through in the  
3 beginning?

4 MR. GIUFFRA: This is going to be a few  
5 questions, not very much; I would say four or five  
6 minutes.

7 THE WITNESS: Yes.

8 BY MR. GIUFFRA:

9 Q You are aware of this document?

10 A Yes.

11 Q It is your testimony that you did not  
12 prepare this letter; right?

13 A No, I did not.

14 Q And you didn't advise your father-in-law  
15 with regard to the preparation of the letter?

16 A No, I was aware of it. I mean, in that he  
17 had a deal with McDougal.

18 Q But other than being knowledgeable about  
19 the fact that he had a deal with McDougal, were you  
20 aware of any of the writings that were being  
21 exchanged by Mr. Ward --

22 A I think earlier somewhere there was a draft

1 of this letter that may have been typed by my  
2 secretary, which would indicate that he was visiting  
3 me, and she typed it. But I don't know if this  
4 particular one was the one that was typed or not. I  
5 have seen a lot of letters like this.

6 Q Now, would it have been your normal  
7 practice to keep in your files a copy of a letter  
8 that Mr. Ward would have sent to Mr. McDougal?

9 A If my secretary typed it, she might have  
10 given me an extra copy. But I don't know.

11 Q Would that have been her normal practice?

12 A Well, what I said is -- he might have come  
13 in, this is the normal practice. He might come in  
14 and said will you type this. She would type it, and  
15 bring in a copy -- bring in maybe -- say how many  
16 copies do you want? And she might bring in two or  
17 three copies and give them to him and give me one.

18 Now, whether I put it back in the file or  
19 threw it in the trash can after he left, I couldn't  
20 tell you what it was. But I don't want to say I  
21 didn't keep a copy because I certainly could have if  
22 she typed it. I don't know if she typed this.

1 Q Was it her normal practice when she typed a  
2 letter for Mr. Ward to give you a copy of it after  
3 the fact?

4 A Not after the fact. He would still be in  
5 my office.

6 Q She would let you take a look at the  
7 letter?

8 A Yes. Yes. One way or the other. I mean,  
9 I don't know that I looked at it --

10 Q But the normal practice would have been  
11 Mr. Ward would have come in with a document that he  
12 would have drafted out himself; right?

13 A Right.

14 Q Your secretary would have typed this letter  
15 up; right?

16 A Right.

17 Q After your secretary typed the letter, but  
18 while Mr. Ward was still on the premises of the Rose  
19 Law Firm, a copy of the typed up letter would have  
20 been shown to you?

21 A Maybe.

22 Q And you might have conceivably discussed

1 the subject matter in a letter with Mr. Ward while he  
2 was still on premises?

3 A Conceivably, yes.

4 Q With regard to this letter, you have no  
5 recollection of every discussing the letter with  
6 Mr. Ward?

7 A I recall discussing the nature of his deal  
8 with Madison, but not the letter, no.

9 Q If a copy -- strike that.

10 Was it your secretary's normal practice to  
11 file documents in your files without showing them to  
12 you?

13 A On occasion.

14 Q But if it had been a document that had been  
15 prepared for Mr. Ward, would she have shown it to you  
16 or would she have -- strike that.

17 If she had typed the document for  
18 Mr. Ward --

19 A Yes.

20 Q -- would it have been her normal practice  
21 to show you the document before she placed it in your  
22 files?

1 A I don't know.

2 Q But I believe you just testified that your  
3 normal practice would have been to at least have seen  
4 a copy of the letters that she typed for Mr. Ward.

5 MR. NIELDS: No, he said maybe.

6 MR. GIUFFRA: We can go back; go back four  
7 or five questions.

8 MR. NIELDS: I think you've probably  
9 exhausted what you can get out of him.

10 (The reporter read the record as requested.)

11 THE WITNESS: What's confusing to me is  
12 that this one doesn't bear a secretarial signature,  
13 so I don't know whether she typed that one or not.

14 MR. KRAVITZ: Which letter are you  
15 referring to?

16 THE WITNESS: The one he handed me.

17 MR. KRAVITZ: You are referring to RS 2899,  
18 the September 24, 1984 Seth Ward letter to James  
19 McDougal that Mr. Giuffra showed you?

20 THE WITNESS: Right.

21 BY MR. GIUFFRA:

22 Q Would it have been your secretary's normal

1 practice to have put some sort of a marking at the  
2 bottom of the letter indicating she had typed the  
3 letter?

4 A Yes, yes.

5 MR. NIELDS: Your four to five minutes are  
6 over.

7 THE WITNESS: It is my fault.

8 MR. GIUFFRA: Off the record.

9 (Discussion off the record.)

10 BY MR. GIUFFRA:

11 Q Let me show you a letter. This is a letter  
12 we received from Vinson & Elkins who is counsel to  
13 the Rose Law Firm. And I show you a copy of the  
14 letter. Third paragraph, it says "in response to  
15 your question" -- this is a letter from Alden Atkins  
16 to Alice Fisher of the Special Committee -- "the copy  
17 of the September 24, 1985 letter was located in  
18 Mr. Hubbell's files, concerning Mr. Ward."

19 Why don't I keep reading. "As I told you  
20 over the telephone, the file title does not mention  
21 Madison Guaranty which is why the document was  
22 overlooked before. My recollection of the file is

1 that it is a random assortment of documents, provides  
2 no further indication about whether Mr. Hubbell  
3 prepared that document."

4 A Okay.

5 Q Do you have any testimony to offer as to  
6 why this document might have been in your files, the  
7 one I showed you bearing Bates numbers RS 2899 to  
8 2900?

9 A Sure. There was lawsuits between Seth and  
10 Madison. That letter, as I understand it, was an  
11 issue so it could have been in a legal -- you know,  
12 in a litigation file. So just because it was  
13 prepared doesn't mean -- I could have gotten it at  
14 any time after it was prepared.

15 Q New topic. Let me show you a document, GRO  
16 658. I am directing your attention to the Skip  
17 Rutherford message slip. It looks to be dated  
18 1/13/94. It says "Skip Rutherford to the Judge, 4:30  
19 p.m.," the message is "he is in Mack McClarty's  
20 office with an urgent personal question for you."

21 Do you recall what this call might have  
22 been in reference to?



1 A No.

2 Q Do you know whether you ever spoke to  
3 Mr. Rutherford on or about January 13, 1994?

4 A I am sure if I got this message, I would  
5 have returned the call, but I don't know what it was  
6 about.

7 Q Who is Kevin O'Keefe?

8 A Kevin O'Keefe was a lawyer from Chicago who  
9 works -- worked in Presidential personnel and I  
10 worked with Kevin a lot on U.S. Attorney's  
11 appointments.

12 MR. KRAVITZ: I'm sorry, off the record.  
13 (Discussion off the record.)

14 BY MR. GIUFFRA:

15 Q Now, do you know Governor Jim Guy Tucker?

16 A Yes.

17 Q Very briefly, what was the nature of your  
18 relationship with Mr. Tucker?

19 A Jim Guy was the prosecuting attorney when I  
20 first came to Little Rock to practice law. He then  
21 was a Congressman, then ran for Senator, and ran  
22 against the President for governor, and then he

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1 practiced law in the interim. He actually at one  
2 time was an associate at the Rose Law Firm before I  
3 got there, and then he was a partner at the Mitchell  
4 firm which was a competing firm.

5 And I tried cases against Jim Guy. He  
6 lived right behind my church, and his daughter and my  
7 daughter went to school together, so I know Jim Guy  
8 very well, and his wife.

9 Q Have you ever had any discussions with  
10 Mr. Tucker about anything having to do with Madison  
11 Guaranty? And I just want to make it faster, Madison  
12 Guaranty, and if at any point --

13 A Mr. Tucker, no.

14 Q Mr. Tucker's wife?

15 A No.

16 Q Mr. Tucker's lawyers?

17 MR. NIELDS: What lawyers? The ones that  
18 defended him in this recent trial?

19 MR. GIUFFRA: Yes. Or any lawyers that  
20 might have represented him back in 19 -- in the 19 --  
21 early 1990s.

22 THE WITNESS: I had lots of discussions

1 with his lawyers, but none about Madison Guaranty. I  
2 mean, he was represented by the Friday firm which is  
3 the other major firm in Little Rock so I have had  
4 talked to them -- had talk to them all my life, but,  
5 to narrow down, talking -- let's see.

6 BY MR. GIUFFRA:

7 Q About Madison Guaranty.

8 A Yes. The Friday firm used to represent RTC  
9 and Madison, after they took over Madison. And so in  
10 connection with the Frost litigation, I might have  
11 talked to the Friday firm lawyers.

12 Q Since January 20, 1993, have you had any  
13 discussions with Mr. Tucker's lawyers about Madison  
14 Guaranty?

15 A No, no, absolutely not.

16 Q Have you ever discussed with Mr. Tucker  
17 David Hale?

18 A Mr. Tucker, no.

19 Q Have you ever discussed with Mrs. Tucker?

20 A No.

21 Q With Mr. Tucker's lawyers?

22 A No.

1 Q Have you discussed with either Mr. Tucker  
2 or Mr. Tucker's wife, or Mr. Tucker's lawyers Capital  
3 Management?

4 A No.

5 Q Have you ever discussed with Mr. Tucker,  
6 Mrs. Tucker, or Mr. Tucker's lawyers, RTC criminal  
7 referrals?

8 A No.

9 Q Did you have an understanding that  
10 Ms. Huber maintained documents relating to the  
11 Clintons' personal finances at the White House? Let  
12 me restate the question.

13 Did you have an understanding that  
14 Ms. Huber maintained at the White House documents  
15 relating to the Clintons' personal finances including  
16 Whitewater.

17 MR. KRAVITZ: You are asking what his  
18 understanding was at a certain time or now?

19 MR. GIUFFRA: Other than from reading it in  
20 press accounts.

21 THE WITNESS: I didn't have an  
22 understanding one way or the other. I knew that

1 Carolyn had done some of their personal financial  
2 work prior to coming to the White House, but once  
3 they were at the White House, I didn't know what she  
4 did.

5 BY MR. GIUFFRA:

6 Q You never had any conversations with  
7 Ms. Huber when you asked her about -- to either  
8 obtain documents relating to the Clintons financial  
9 records, or in which you gave her documents relating  
10 to the Clintons' financial records?

11 A No, I did not.

12 Q You never gave Mrs. Huber any documents  
13 bearing on the Clintons at all --

14 A No.

15 Q -- in the period 1993, 1994?

16 A Not that I can recall.

17 MR. GIUFFRA: You want to take a break here  
18 now?

19 MR. KRAVITZ: Yes, off the record.

20 (Discussion off the record.)

21 (Recess.)

22 MR. GIUFFRA: Back on the record. Note the

1 time is 12:30.

2 BY MR. GIUFFRA:

3 Q I want to clarify something to make sure I  
4 asked the question properly. With regard to July 27,  
5 I was asking about the discovery of the note.

6 Did you have any conversations with anyone  
7 about the substance of the note on the 27th, meaning  
8 what was in the note?

9 A No. I mean, the first time that I knew  
10 what was in the note was when Dave showed it to me.

11 Q On the 28th, in the morning?

12 A We think it is the 28th. I think we are  
13 pretty close that it's the 28th.

14 Q We discussed before that Mrs. Foster was  
15 where you were looking for a note. Did you ever  
16 discuss either the discovery or the substance of the  
17 note with Mrs. Foster?

18 A Lisa, no.

19 MR. NIELDS: At what time period?

20 MR. GIUFFRA: Anytime.

21 THE WITNESS: I don't think I ever talked  
22 to Lisa about the substance of the note.

1 BY MR. GIUFFRA:

2 Q And just to be clear on this point, you  
3 never discussed with Mrs. Clinton why she never  
4 discussed with you either the substance or the  
5 discovery of the note on the 27th?

6 A No.

7 MR. KRAVITZ: If possible, can I ask one  
8 follow-up to that last question? Mr. Hubbell, is it  
9 fair to say then any testimony you have given during  
10 the course of this deposition as to why it is that  
11 Mrs. Clinton never discussed with you the discovery  
12 of the note or the substance of note is purely  
13 speculative on your part?

14 THE WITNESS: Yes. I mean, I never talked  
15 to her about it.

16 BY MR. GIUFFRA:

17 Q It is also based --

18 MR. KRAVITZ: Let him answer the question,  
19 please.

20 THE WITNESS: It is all based on what I  
21 guess why she wouldn't have, and based on what Bernie  
22 had told me, was that they wanted to keep me out of

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1 it.

2 BY MR. GIUFFRA:

3 Q And the "they" did not include  
4 Mrs. Clinton?

5 A No. I don't know.

6 Q It may well have been Mrs. Clinton who was  
7 one of the people who didn't want you to know about  
8 the substance or discovery of the note?

9 A I have no idea.

10 Q Bernie and other people were concerned  
11 about you being told about the discovery and  
12 substance of the note?

13 A No, it was Phil who wanted to keep me out  
14 of it. Phil was the one I had the first conversation  
15 about staying out of the investigation. I think it  
16 was Phil.

17 Q Because of your relationship with --

18 MR. KRAVITZ: I have to object to your  
19 interrupting him. Let him finish what he is saying.

20 THE WITNESS: It was Phil that then  
21 conveyed that to Bernie and whoever else, I don't  
22 know. Bernie -- I have a tendency to use the papal



1 we when I talk about Bernie because I know Bernie  
2 talks to a lot of people. But I know Phil is the one  
3 that talked to Bernie and said we are going to keep  
4 Web out of it.

5 BY MR. GIUFFRA:

6 Q It was your understanding they wanted to  
7 keep you out because of your prior relationship with  
8 Mr. Foster?

9 A My personal relationship, yes.

10 Q Did you ever discuss with anyone why  
11 Mr. Nussbaum was allowed to participate in the review  
12 of the documents while the decision was made to  
13 exclude you from that process?

14 A Let me qualify, then I'll answer you. The  
15 qualification is, it wasn't any conscious recusal.  
16 It was best that Web not get involved.

17 Then, when I talked to Phil about Bernie --  
18 about the difficulty they had with him searching  
19 Vince's office -- I think there is a lot of testimony  
20 in front of the Committee about that -- I might have  
21 said -- in fact I believe I said. But I don't know  
22 for sure at this point what I've ever said, that

1 that's one of the reasons I talked to Bernie about  
2 him recusing, so -- I could have talked to Phil about  
3 it. I thought Bernie ought to stay out of the  
4 investigation. The best I am certain about anything  
5 I probably talked to Phil about it.

6 Q Not Bernie?

7 A I talked to Bernie about it the day after  
8 Vince died and I think I've testified before the  
9 Committee about that.

10 MR. NIELDS: Yes, you have.

11 THE WITNESS: But I don't think I talked  
12 with Bernie about it afterwards. It is water under  
13 the bridge.

14 BY MR. GIUFFRA:

15 Q Now, with regard to Governor Tucker, we  
16 went through Governor Tucker, his wife, and his  
17 lawyers on various subjects. Did you speak to anyone  
18 else who might be deemed to be a representative of  
19 Governor Tucker, either someone on the staff of the  
20 governor's office or a friend of Governor Tucker,  
21 with regard to Madison Guaranty, David Hale, Capital  
22 Management Services after January 20, 1993?

1 A I am just thinking of all the people who  
2 can be representative of Governor Tucker.

3 Q Take your time.

4 A Not that I recall.

5 Q Were you aware that Governor Tucker was to  
6 meet with President Clinton on October 5, 1993 at the  
7 White House?

8 A I could have been. I know I knew at that  
9 date, but I don't think I did before that.

10 MR. KRAVITZ: I think, Bob, just so the  
11 record is accurate, I think it was October 6.

12 MR. GIUFFRA: October 6; I'm sorry.

13 BY MR. GIUFFRA:

14 Q And you were aware of that meeting on  
15 October 6th for what reason?

16 A I think I was at the White House that day,  
17 and I remember Bruce saying something about, Bruce or  
18 somebody saying Jim Guy is here, you might want to  
19 step in and say hi.

20 Q Did you step in and say hi?

21 A No.

22 Q And did you speak to Mr. Tucker at all on

1 October 6, 1993?

2 A Not that I recall.

3 Q Do you recall speaking with Governor Tucker  
4 in October of 1993, September, October, 1993?

5 A No.

6 Q When did you learn that Bob Barnett was  
7 rendering legal services to the Clintons?

8 A Sometime in the summer of 1993.

9 Q And in what context did you learn that  
10 Mr. Barnett was providing legal services to the  
11 President and Mrs. Clinton?

12 A The conversation I know I had was with Mike  
13 Berman, who was providing legal services as well, and  
14 advice, to the Clintons, and I think he is the one  
15 who told me that Bob had given legal advice to the  
16 Clintons.

17 Q And what was your understanding of the  
18 nature of the legal advice that Mr. Barnett was  
19 providing to the Clintons?

20 MR. NIELDS: The nature of the legal  
21 advice?

22 BY MR. GIUFFRA:

1 Q What was the subject matter?

2 A That Bob was doing?

3 Q Yes.

4 A I don't know. I know what Mike was doing.

5 I don't know what Bob was doing.

6 Q What was your understanding what Mike was  
7 doing for the Clintons?

8 A Mike was helping the Clintons set up -- set  
9 up procedures and processes for receiving gifts and  
10 things of that sort, to make sure that they complied  
11 with the applicable laws to make sure they didn't get  
12 in trouble.

13 Q Have you ever discussed anything having to  
14 do with Madison Guaranty or Whitewater with  
15 Mr. Barnett?

16 A At one point, later, Mr. Barnett was on an  
17 airplane, and Mr. Barnett advised the President not  
18 to talk to me about Whitewater. But that was much  
19 later on. It was when -- at the time of Mrs. Kelly's  
20 funeral.

21 Q That's January 1994?

22 A Yes.

1 Q Any conversation with Mr. Berman about  
2 Madison Guaranty or Whitewater?

3 A About Madison or Whitewater, I don't  
4 believe so. I don't recall. I might have -- let me  
5 go back. Mike Berman was the head of my confirmation  
6 team and I can't -- I don't think Madison was an  
7 issue -- our representation of Madison in my  
8 confirmation, but if it was, I would have talked to  
9 Mike about it. But it was that context, not anything  
10 about Whitewater, certainly not.

11 Q Was Mr. Berman aware that you had certain  
12 documents relating to Madison and Whitewater at your  
13 house?

14 A Yes.

15 Q And when did he learn of the fact that you  
16 had those documents at your house?

17 A I don't know if he knew beforehand, but he  
18 definitely knew right after Vince's death because  
19 Mike was the one I talked to about helping me get  
20 them out of my office and to the -- I mean, my house  
21 to the Clintons' lawyers.

22 MR. GIUFFRA: Off the record for a second.

1 (Discussion off the record.)

2 BY MR. GIUFFRA:

3 Q What was the context of -- strike that.

4 How did the conversation between yourself  
5 and Mike Berman come about after Mr. Foster's death  
6 in connection with the documents that you had in your  
7 basement that related to Whitewater and Madison?

8 A After Vince's death -- Vince and I had --  
9 let me go back. Vince and I had talked about doing  
10 something with the documents that were in my  
11 basement.

12 Q You had raised the issue with him?

13 A We both talked about it on several  
14 occasions. After Vince's death, I didn't know who  
15 would be advising the Clintons on this, but I knew  
16 Mike had advised the Clintons on some other issues.  
17 And so I talked to Mike, and Mike told me -- and  
18 that's why I think it was the first time I knew Bob  
19 Barnett was doing legal work -- that Bob was doing  
20 personal legal work for the Clintons. And he would  
21 talk to Bob and get back to me. And Bob would be the  
22 right person to talk to about this issue.

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1 And Berman then came back to me and told me  
2 Bob had a conflict, that being Rita, Bob's wife, was  
3 going to work for CBS at the White House, and so Bob  
4 was going to recuse on all White House issues and be  
5 involved as their personal counsel at all for Rita's  
6 benefit.

7 But Bob was trying to get one of his  
8 partners hired to substitute, and so we had more than  
9 one conversation. David Kendall, I was told David  
10 was going to do that.

11 Q Do you recall how long after Mr. Foster's  
12 death you would have had this conversation with  
13 Mr. Berman about the disposition of the documents in  
14 the basement?

15 A Within the month.

16 Q Did you have any understanding that  
17 Mr. Berman had a role during the campaign or after  
18 the campaign with anything having do with Madison  
19 Guaranty or Whitewater Development Corporation?

20 A Mr. Berman?

21 Q Yes.

22 A Not to my knowledge, he had any relevance



1 to Madison.

2 Q He was someone you understood to be  
3 personal, outside counsel to the Clintons?

4 A Yes.

5 Q What kind of work was Berman doing for the  
6 Clintons?

7 A I knew what he was working on; it wasn't  
8 Madison or Whitewater.

9 Q It had to do with the gift issue?

10 A Gift issues, yes.

11 Q I believe you turned the documents over to  
12 Mr. Kendall sometime during the late fall of 1993; is  
13 that correct?

14 A That's correct.

15 Q November or October?

16 A November, around 17th or 18th, something  
17 like that.

18 MR. NIELDS: It's been testified to  
19 previously before you guys in some detail.

20 MR. GIUFFRA: I have no intention of going  
21 over it again.

22 MR. NIELDS: You are getting me worried

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1 about your next commitment to me.

2 MR. GIUFFRA: Don't worry.

3 BY MR. GIUFFRA:

4 Q Did you speak to anyone else other than  
5 Mr. Berman between approximately August 1996 and  
6 November 1996 about what to do with the documents  
7 that were in your basement?

8 MR. NIELDS: You mean 1994.

9 MR. GIUFFRA: I'm sorry. Let me rephrase  
10 the question.

11 BY MR. GIUFFRA:

12 Q Between August 1993 and November 1993, did  
13 you speak to anyone other than Mr. Berman about the  
14 disposition of the documents that were in your  
15 basement?

16 A Yes.

17 Q Who would that be? Just the names.

18 A Jim Lyons. I might have told Bernie, I  
19 think I probably did; and Bruce Lindsey; those are  
20 the two most likely. And Bill Kennedy, probably as  
21 well.

22 Q What do you recall about your conversation

1 with Mr. Lyons?

2 A This is a progression because actually my  
3 memory was refreshed by somebody who questioned me.  
4 At this point, I think it was the special counsel,  
5 may have been the first special counsel.

6 Anyway, Jim, when Whitewater started  
7 hitting the paper and everything, Jim called me and  
8 asked me to -- he knew that I -- he wanted to know  
9 where the Betsey files, as he called them, were. And  
10 I told him I still had them and he asked that I bring  
11 those that related to Whitewater to him, so that he  
12 could help prepare responses to questions that were  
13 coming in, that he would be working with Bruce  
14 Lindsey on that issue.

15 And ultimately I did bring some of the  
16 documents to Jim, and we had lunch that day, and  
17 talked about them. And I think at some later time,  
18 once I had David Kendall, I called Jim and said would  
19 you send me back those documents I gave you.

20 I think now, I think I was incorrect  
21 earlier. I think Jim sent them back to me and then I  
22 gave them to David. Does that make sense?

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1 Q Yes. I want to make sure I have it right.  
2 So at some point between August '93 and when,  
3 September '93, or is it later?

4 MR. NIELDS: November is the month.

5 BY MR. GIUFFRA:

6 Q That's when you turned them over to  
7 Kendall?

8 A I certainly turned certain files over to  
9 Jim Lyons in late October 1993.

10 Q Late October 1993 you turned files over to  
11 Jim Lyons?

12 A Right.

13 Q Did you mail them to him? Did you give  
14 them?

15 A I personally delivered them. Jim was in  
16 Washington and I brought them to Jim.

17 Q And the files you gave to Mr. Lyons related  
18 to what subjects?

19 A Whitewater.

20 Q Just strictly the Whitewater files?

21 A I believe so.

22 Q And then sometime between late October '93

1 and November 17, '93 Lyons gave the files back to  
2 you?

3 A Yes.

4 Q Was it about a box full of files?

5 A Yes.

6 Q Did he deliver the files to you in person?

7 A I think he shipped them back to me. I  
8 didn't remember it this way earlier. But I -- my  
9 memory has been refreshed through the many questions  
10 I have had. I think that's right.

11 Q And you gave the box of Whitewater  
12 documents to Mr. Kendall?

13 A Yes. Along with a lot of other documents,  
14 yes.

15 Q Did Mr. Lyons ever contact you to discuss  
16 any of the documents contained in the box that you  
17 had given him sometime in late October 1993?

18 A Jim asked that I get them to him. He asked  
19 that I actually meet with him, but I didn't because I  
20 didn't -- so after that, I don't think so. I think I  
21 called Jim and asked him to send them back.

22 Q Do you know why Lyons didn't send the

1 documents directly to Kendall?

2 A No. You would have to ask Jim. I may have  
3 asked him to send them directly to me. I just don't  
4 remember.

5 Q With regard to Mr. Nussbaum and  
6 conversations you had with him between August '93 and  
7 November '93 about the documents in your basement,  
8 what do you recall about those conversations?

9 A I don't remember anything specific. I just  
10 know that Bernie knew that I had those files and that  
11 I was -- I'm sure at some point I said Bernie, I am  
12 going to try get those in the hands of Bob Barnett  
13 and ultimately David Kendall.

14 Q Did Bernie know of the fact that you had  
15 the files prior to the time of Mr. Foster's death?

16 A I don't know the answer to that question.  
17 I know Vince did. I just couldn't tell you whether  
18 Bernie did or not.

19 Q Now, with regard to Mr. Lindsey, what do  
20 you recall about your conversations with him between  
21 August '93 and November '93 about the documents that  
22 were in the basement?

1       A    Again, I don't remember any specific  
2   conversations, but I know that at some point I would  
3   have -- Bruce was aware all along that I have the  
4   files in my basement or had the files. And at some  
5   point I told him that I was having conversations to  
6   try to get them in the hands of Bob.

7       Q    Did Mr. Lindsey have any understanding why  
8   you were the custodian of these documents?

9       A    Yes.

10      Q    What was his understanding?

11      A    That back in the transition, Betsey had  
12   delivered those documents to me.

13      Q    Did he have any understanding as to why you  
14   were the person that was chosen to keep these  
15   documents and why the documents needed to be in  
16   Washington?

17      A    I think he had an understanding as to why I  
18   was given the documents. I don't think he really  
19   thought -- I don't know what Bruce thought about why  
20   I was the right person.

21           MR. NIELDS: You are asking what's in Bruce  
22   Lindsey's mind.

1           BY MR. GIUFFRA:

2       Q    What about conversations with Mr. Kennedy  
3   between August 1993 and November 1993 about the fact  
4   that you had certain documents in your basement  
5   relating to Madison Guaranty and Whitewater  
6   Development Corporation?

7       A    Again, you put a caveat in. When I talked  
8   to most of these people it was about all of the  
9   files. I didn't specify, by the way, I've got  
10   Madison files in my basement. It was always I've got  
11   the Betsey files in my basement. It was never  
12   limited to Madison. So it would have been the same  
13   type of conversation, that it is time we got the  
14   files organized, it is time we got them in the hands  
15   of the counsel here in D.C.

16           I never, never had these type of  
17   conversations that were limited to hey, I've got  
18   Madison files. I mean, that's -- I don't want to  
19   leave the impression, for example, especially with  
20   Mike Berman, that I -- that the first conversation  
21   hey, by the way, after Vince's death, I've got  
22   Madison files. Madison wasn't an issue. I said I've



1 got the Betsey files. I hope I have made myself  
2 clear.

3 Q Did you have any discussion with anyone  
4 prior to November of 1993, about the fact that there  
5 might be materials in the Betsey files that could be  
6 useful or be important in responding to either press  
7 inquiries or to investigative requests?

8 A Those people I just told you, now Bruce  
9 especially, where I might have called Bruce and said  
10 do I need to go -- I don't know this for sure, but I  
11 have in the back of my mind that I probably picked up  
12 the phone once the press started hitting, Bruce, I've  
13 got Betsey's files in the basement, do I need to go  
14 pull those for you? But I am not aware of any  
15 investigation at that point.

16 Q So it would be your best recollection that  
17 sometime in September 1993, when there was -- started  
18 to be press inquiries about Whitewater and Madison  
19 that you picked up the phone and called Mr. Lindsey,  
20 and said Bruce, I have these documents, do you want  
21 me to get some of them over to you?

22 A Probably the way it went either Bernie or

1 Phil said, that Bruce had been designated as the  
2 person to respond to press inquiries. And as a  
3 result of that, I would have called Bruce and said do  
4 you need me to look and see what files we have, and  
5 get them to you.

6 Q Did there ever come a time in either  
7 September, October, or November 1993 when anyone came  
8 to your house to look at documents that were within  
9 the Betsey files?

10 MR. NIELDS: Haven't we be over this a lot  
11 of times?

12 MR. GIUFFRA: I am not sure. Sometimes his  
13 recollection seems to be refreshed.

14 THE WITNESS: The answer is nobody came  
15 over November or December to look at the files until  
16 David Kendall came.

17 BY MR. GIUFFRA:

18 Q You didn't bring the files to anyone?

19 A I told you I brought the files to Jim Lyons  
20 in October.

21 Q In October of 1993, but other than that?

22 A Right.

1 Q Did you discuss with Jim Blair at any time  
2 in 1993 the fact that you had the Betsey files in  
3 your basement?

4 A I don't know. It is possible, but I don't  
5 know.

6 Q With regard to the telephone conversations  
7 you had with April Breslaw in --

8 MR. NIELDS: This is a new topic?

9 MR. GIUFFRA: No, I want to be sure he  
10 doesn't have new evidence he is going to offer.

11 MR. NIELDS: You told me we had two topics  
12 this morning. This is now topic 6, I think. I am  
13 getting concerned about the time.

14 MR. GIUFFRA: I am going to move.

15 BY MR. GIUFFRA:

16 Q In September '93, did you report on that  
17 conversation you had with Ms. Breslaw to anyone?

18 A The one where April call me about the --  
19 about whether there was a conflict?

20 Q Yes.

21 A Whether I disclosed a conflict?

22 Q Yes, in the Frost litigation.

1 A In the Frost litigation. I might have  
2 called -- I can't remember the sequence, whether Rick  
3 Donovan called me or I called Rick at the Rose Firm.

4 Q Do you think you called anyone else?

5 A No.

6 Q Did you ever discussed with Mr. Donovan at  
7 any time work that he performed on behalf of Madison  
8 Guaranty in the mid-1980s?

9 MS. SHORES: '90?

10 MR. GIUFFRA: Mid-1980s I think I said.

11 MS. SHORES: I know it discusses in the  
12 '90s.

13 MR. GIUFFRA: Strike that.

14 BY MR. GIUFFRA:

15 Q After January 1, 1992, okay, did you ever  
16 discuss with Mr. Donovan work that he performed on  
17 behalf of Madison Guaranty in the 1980s?

18 A No, I didn't.

19 Q With regard to the Breslaw conversations,  
20 you never discussed those with anyone at the White  
21 House?

22 A The White House, no.

1 Q The only person you can recall is Rick  
2 Donovan?

3 A Rick Donovan. It is possible somebody else  
4 at the Rose Firm, but I don't remember. I know there  
5 was a sequence of calls between Rick and I, when the  
6 issue came up. But who called who first, I can't  
7 remember.

8 Q Now, there is a sequence of calls between  
9 yourself and Mr. Kennedy, Mr. Lindsey, Mr. Nussbaum,  
10 in the period -- actually on September 29 and also  
11 on -- on September 29.

12 THE WITNESS: Do you have my calendar?  
13 September 29?

14 MR. GIUFFRA: Yes.

15 THE WITNESS: I have gotten to where I  
16 carry these around. Okay, September 29, okay.

17 BY MR. GIUFFRA:

18 Q Do you know whether any of those  
19 conversations might have related to the fact --  
20 anything having to do with the Betsey files?

21 MR. NIELDS: They might have?

22 THE WITNESS: On September 29?

1 MR. GIUFFRA: Yes.

2 THE WITNESS: It is possible. I just don't  
3 know.

4 BY MR. GIUFFRA:

5 Q Do you have any recollection, as you sit  
6 here today, about what you might have discussed in  
7 those conversations on the 29th with Kennedy,  
8 Nussbaum and Lindsey?

9 A I know what I was talking to Bernie about  
10 on one issue and that's because I'm refreshed by my  
11 calendar.

12 Q What issue was that?

13 A That is War Powers. The President's  
14 authority and limits under the War Powers Act. Where  
15 I was working with Walter Dellinger and Bernie on  
16 that issue at that time. I know that because -- I  
17 mean I remember the issue and the calendar says on  
18 28th we met on it and I know that was an ongoing  
19 discussion.

20 And I met with Jamie as well, the same day.

21 Q That's Gorelick?

22 A At that time she was general counsel of the

1 Department of Defense, but you are saying on the 29th  
2 and 30th.

3 Q Do you know what else you might have been  
4 speaking to Mr. Nussbaum about, if anything?

5 A I talked, at that point, on almost a daily  
6 basis about appointments with Mr. Nussbaum  
7 Mr. Lindsey and Mr. Kennedy. We had several that  
8 were causing problems.

9 Q Did you have any discussions with either  
10 Mr. Nussbaum, Mr. Lindsey, or Mr. Kennedy about the  
11 press inquiries regarding Whitewater or Madison?

12 A The one thing I do remember is asking who  
13 was going to be the point person, and being told  
14 Bruce. And I would have --

15 Q That would have happened sometime  
16 presumably in September '93?

17 A Sometime, I can't tell you precisely when  
18 that was.

19 Q But in the period September 1993, that's  
20 the only conversation you can recall with someone  
21 trying to find out who was the point person on  
22 responding to the press inquiries?

1 A No. I mean -- I think it's -- I've  
2 testified that at some point Kennedy started talking  
3 to me about the call he had from David Hale. I think  
4 we've had --

5 Q We have had testimony about that?

6 A We have had testimony about that.

7 Q That would have been sometime in this  
8 period, September '93?

9 A That's the best of my recollection when it  
10 was.

11 Q This would be the conversation Mr. Kennedy  
12 had with Mr. Coleman?

13 A Right.

14 Q Who was Mr. Hale's lawyer at the time?

15 A Right. And I believe that was September  
16 but, you know, it blends together at this point.

17 MR. NIELDS: I have a sense these issues  
18 have been covered.

19 MR. GIUFFRA: They have been. I just want  
20 to see --

21 THE WITNESS: There is nothing new, if  
22 that's what you are asking.



1 BY MR. GIUFFRA:

2 Q There is a record of a telephone  
3 conversation between -- or at least a message from  
4 Mr. Berman to you on the 30th.

5 A Okay.

6 Q Do you think that message -- do you know  
7 what that message would have related to?

8 MR. KRAVITZ: Does the message slip itself  
9 indicate anything?

10 MR. GIUFFRA: No.

11 THE WITNESS: On the 30th, let's see.

12 MR. NIELDS: Is there something about that  
13 particular timing that suggests something you want to  
14 ask him, or are you just picking out a --

15 THE WITNESS: On October 4th I had a  
16 meeting with Mike and Bob Barnett so I'm sure I  
17 wouldn't be surprised if that conversation wasn't --

18 BY MR. GIUFFRA:

19 Q Do you know what the substance of the  
20 meeting on October 4th was?

21 A Trying to get the documents in the hands of  
22 the Clintons' counsel.

1 Q And that would have occurred at the October  
2 4th meeting?

3 A Yes, that would be one meeting that we  
4 would have had.

5 Q Was the discussion about getting the Betsey  
6 files to the Clintons' counsel, or was there a  
7 discussion of specific files within the Betsey files?

8 A No, it would be the Betsey files.

9 Q Any discussion at that meeting on October  
10 4, 1993 about Madison Guaranty or Whitewater  
11 Development Corporation, subjects that were obviously  
12 on the radar screen at that point?

13 A I am sure that they were on radar screen,  
14 and I would have been saying, I can't believe this is  
15 coming up. I am not sure by October 4th that I knew  
16 exactly what precisely was in the files. So I don't  
17 think I would have said hey, we've got these in the  
18 files.

19 Q Were you aware as of October 4, 1993 of the  
20 fact that there were Whitewater and Madison files  
21 amongst the Betsey files?

22 A I think there were Whitewater files.

1 Q Were you aware as of October 4, 1993 of the  
2 fact that there were Whitewater files among Betsey  
3 files?

4 A I think that's shown on the index, yes.

5 Q And you were aware -- you had looked at the  
6 index?

7 A Yes, whatever is on the index I was aware  
8 of.

9 Q Did you keep a copy of the index?

10 A I've seen copies. Did I give you a copy?  
11 I have been shown the index. I know -- well, I in  
12 fact was shown a copy of the index a couple of weeks  
13 ago.

14 MR. NIELDS: Not by us.

15 THE WITNESS: Not by you.

16 BY MR. GIUFFRA:

17 Q Do you know who has the index?

18 A I know that at one time Mr. Kendall had a  
19 copy of the index. I know that the Special Counsel  
20 has a copy of the index.

21 Q Did you keep a copy of the index for  
22 yourself?

1 A I kept a copy in the boxes.

2 Q Once you turned the boxes over to  
3 Mr. Kendall you didn't keep a copy?

4 A I don't think so. If John doesn't have it,  
5 I don't have it.

6 MR. NIELDS: We don't think we have it.

7 MR. GIUFFRA: Could you check on that for  
8 us?

9 MR. NIELDS: We are certain we don't have  
10 it. Excuse me. My counsel tells me.

11 BY MR. GIUFFRA:

12 Q Now, on October 4, 1993 you also spoke with  
13 Mr. Lyons. You just testified you spoke to Mr. Lyons  
14 at some point about what to do with the Betsey files?

15 A Right.

16 Q And you at some point advised Mr. Lyons  
17 that the Betsey files included files related to  
18 Whitewater Development Corporation; right?

19 A He knew that, yes.

20 Q Do you know how he knew that?

21 A He had done the work in the campaign on  
22 Whitewater.

1 Q But do you know how he knew that you had  
2 the files?

3 A He worked in the transition and he was one  
4 of the counsels to the transition. And one of his  
5 major issues was dealing with document retention, so  
6 I can't say anything to a certainly because the  
7 transition was such a mad house, but I am 99 percent  
8 certain that he knew, as a result of his work in the  
9 transition, that I had the Betsey files.

10 Q And on October 4, 1993, Mr. Lyons called  
11 you at about 3:25. Did you ever speak with Mr. Lyons  
12 on the 4th, as far as you can recall?

13 A I don't recall, but I wouldn't be  
14 surprised.

15 Q Were there other subjects you were  
16 discussing with Mr. Lyons during that period?

17 A Yes.

18 Q What were those subjects?

19 A I had been invited to come to Denver by  
20 Mr. Lyons to speak to the -- gosh, I can't remember  
21 the group.

22 MR. NIELDS: I again have the strong sense

1 we have been over this before.

2 THE WITNESS: It is not on my calendar, but  
3 there was a large Civil Rights group in Denver, that  
4 was honoring a man who worked in the South in civil  
5 rights, and I was asked to come give the keynote  
6 speech for that dinner. And I went out and spent the  
7 evening with Jim, and the day with Jim. And he was  
8 my -- he was my escort for two days.

9 BY MR. GIUFFRA:

10 Q But at some point in either September,  
11 October '93 you did speak to Mr. Lyons about the fact  
12 that you had a Whitewater file in your basement?

13 A Yes.

14 MR. NIELDS: He testified to that just a  
15 little bit ago today.

16 BY MR. GIUFFRA:

17 Q Two more quick things -- two more things  
18 and you will be done.

19 MR. KRAVITZ: That's what we started with  
20 four hours ago.

21 BY MR. GIUFFRA:

22 Q I just want to be sure on this that there

1 is no new testimony you have to offer. You  
2 previously have been asked about the billing records  
3 that were found at the White House and turned over to  
4 the Committee on January 5, 1996?

5 A On numerous occasions, yes.

6 Q Since the last time you testified before  
7 the Committee, has your memory been refreshed that  
8 you have additional testimony to offer?

9 A I really can't remember the testimony  
10 before Congress versus any of the other people who  
11 have asked me questions. But I don't remember there  
12 is anything new. I have been shown the documents,  
13 and I still remember my asterisk.

14 Q You remember seeing the documents during  
15 the campaign?

16 A Right.

17 Q And that was the last time you saw the  
18 documents?

19 A Yes.

20 Q And as far as you know, those documents  
21 were not among the Betsey files that were in your  
22 basement?

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1 A Correct.

2 Q Mr. Hubbell, the last time you came before  
3 the Committee on February 7, 1996, you were asked  
4 about work you had done for the Lippo Group. Do you  
5 recall that?

6 A Yes.

7 MR. NIELDS: It may speed things along if I  
8 make a statement for the record. As you know, we  
9 talked about this subject in advance of this  
10 deposition. And Mr. Hubbell would respectfully  
11 decline to respond to questions that go into the  
12 matters that his clients regard as confidential,  
13 related to work that he did for them, and related to  
14 their relationship, and which are unrelated to any of  
15 the matters under investigation by the Special  
16 Committee.

17 And you know, there may be some questions  
18 that don't get into the confidential client matters,  
19 that may be able to help you on the subject matter  
20 that was approached I think at the public hearing,  
21 having to do with Lippo.

22 MR. GIUFFRA: Why don't we go through it



1 and if you want to interpose an objection, interpose  
2 the objection and that will be --

3 MR. NIELDS: I will incorporate by  
4 reference the objection I have just made to save  
5 time.

6 BY MR. GIUFFRA:

7 Q Just to get the dates down, when did you  
8 plead -- enter a guilty plea, to the crimes for which  
9 you are now in prison?

10 A Early December of 1994; is that correct?  
11 My counsel says yes. It sounds right. It was either  
12 late November or early December.

13 THE WITNESS: After Thanksgiving?

14 MR. NIELDS: That's right.

15 BY MR. GIUFFRA:

16 Q Early December of 19 --

17 A '94.

18 Q You resigned from the Justice Department  
19 in?

20 A April 1994.

21 Q And the first publicity about the fact that  
22 you might be up for criminal investigation for

1 matters about which you are now in prison would have  
2 been?

3 A Criminal investigation?

4 Q Or any investigation.

5 A Well --

6 Q Let's break it up. We will do any  
7 investigation.

8 MR. NIELDS: I am not sure any of those  
9 questions is going to be easier to answer.

10 BY MR. GIUFFRA:

11 Q Was it before or after you resigned?

12 A That there was a criminal investigation,  
13 after.

14 Q How about publicity about any  
15 investigation?

16 A I am not aware that there was any publicity  
17 about an investigation prior to my resignation.

18 Q And do you recall approximately when the  
19 first publicity would have been about the fact that  
20 you were under some investigation?

21 A No.

22 Q It would have been obviously sometime

1 between April and December 1994?

2 MR. NIELDS: I remember frankly a big press  
3 thing right around Thanksgiving.

4 THE WITNESS: I do remember the  
5 Thanksgiving information.

6 BY MR. GIUFFRA:

7 Q That would have been sometime in November  
8 of '94?

9 A Right.

10 Q And you went to prison on what date, August  
11 7, 1994?

12 MR. NIELDS: Wait. I think he means --

13 THE WITNESS: 1995, thank you.

14 MR. NIELDS: -- '95.

15 MR. GIUFFRA: Can we go off the record for  
16 a second.

17 (Discussion off the record.)

18 BY MR. GIUFFRA:

19 Q Now, while you were a partner at the Rose  
20 Law Firm, had you done any work for the Lippo Group  
21 or any affiliate of the Lippo Group?

22 MR. NIELDS: First of all, I would hope you

1 would reframe the question in some way so it doesn't  
2 directly inquire about legal work done for a client.

3 MR. GIUFFRA: It is a yes or no question.

4 MR. NIELDS: Well you ask the questions you  
5 want about that, but I would -- how about were you  
6 familiar with the Lippo Group while you worked in  
7 Little Rock; you might get the information easier  
8 that way. Go ahead. He can answer that question yes  
9 or no, the one that you asked.

10 BY MR. GIUFFRA:

11 Q My question was, while you were a partner  
12 at the Rose Law Firm, did you perform any legal  
13 services for either the Lippo Group, or the Worthen  
14 Bank?

15 A Yes.

16 MR. NIELDS: And again, I want to be clear,  
17 by letting him answer these questions, obviously, we  
18 are not waiving any pertinence objections we might  
19 have later on. But I want to be as cooperative as I  
20 can and still meet my client's needs.

21 BY MR. GIUFFRA:

22 Q Did you perform the legal services -- did

1 you perform legal services for the Worthen Bank?

2 A Yes.

3 Q Did you perform legal services for the  
4 Lippo Group?

5 A No.

6 Q That's helpful. In connection with the  
7 services that you performed for the Worthen Bank  
8 while you were a partner of the Rose Law Firm, did  
9 you become acquainted with persons from the Lippo  
10 Group?

11 A Yes.

12 Q And who were the persons from the Lippo  
13 Group with whom you became acquainted in connection  
14 with your representation of the Worthen Bank?

15 A Mochtar Riadi, M-o-c-h-t-a-r, R-i-a-d-y,  
16 was on the board of Worthen. I think it -- I think  
17 Worthen Holding -- Worthen Bank Corporation is the  
18 correct name. The holding company was Bank  
19 Corporation; Worthen Bank was the bank. I think  
20 Mochtar served as a board member of the holding  
21 company. James Riadi was president of Worthen Bank.  
22 I think he also served on the board of the bank

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1 corporation, and the bank itself.

2 There's another individual that headed up  
3 and was president of Worthen International, that I --  
4 his last name was Lee, but I can't remember his first  
5 name at this point. And I think he served on the  
6 board of Worthen International. And he may have  
7 served on the board of Worthen Bank, I just -- I  
8 can't tell you at this point.

9 There were a couple of other individuals  
10 who had worked for Lippo who came to Little Rock and  
11 worked for Worthen Bank Corporation or one of its  
12 affiliates, but I don't remember their names, but I  
13 did at the time, I knew them at the time. I just --  
14 it was a broader question than I was expecting. But  
15 I will try to be accurate in that there were several  
16 people from Lippo who came when Lippo became a major  
17 stockholder in Worthen Banking Corporation.

18 Q Were you Rose's partner in charge or  
19 billing partner in connection with matters the firm  
20 represented Worthen Bank on?

21 A On rare occasions. Most of it was handled  
22 by other partners; on a few matters, I was the

1 billing partner. Worthen was a major client of the  
2 firm. That's not -- that's public information.

3 Q The matters you would have work on for the  
4 Worthen Bank, were those have involved litigation?

5 A Litigation or litigation related matters.

6 I mean, a claim against an insurance company is a  
7 litigation related matter even though it might not  
8 come to litigation. The collection of a loan maybe,  
9 if you don't have to file suit, can still be  
10 litigation related.

11 Q Without disclosing any client confidences,  
12 or breaching any attorney-client privilege, can you  
13 describe generally the subject matters, the nature of  
14 the litigation in which you would have been involved?

15 MR. NIELDS: I just --

16 BY MR. GIUFFRA:

17 Q If they are public, tell us the public  
18 ones.

19 MR. GIUFFRA: Actually that's in your  
20 client's interest.

21 MR. NIELDS: Well, I don't feel comfortable  
22 just off the cuff having him describe legal work that

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1 he did for clients at the Rose Law Firm. I think  
2 that's --

3 MR. GIUFFRA: It was a lawsuit by Worthen  
4 Bank against company X over a contract dispute, and  
5 that would be sufficient.

6 MR. NIELDS: If it is a matter of public  
7 record, you can answer.

8 THE WITNESS: There are a couple in the  
9 filing statements.

10 MR. NIELDS: Go ahead.

11 THE WITNESS: One is when Worthen, on  
12 behalf of a customer, invested 52 million of the  
13 customer's funds in a brokerage House in New Jersey.

14 BY MR. GIUFFRA:

15 Q Is this the Bevel Bresler --

16 A Bevel Bresler Shulman matter. Part of the  
17 recovery of that funds was a claim against an  
18 insurance company for \$20 million on errors and  
19 omissions policy. And I negotiated that settlement,  
20 and monitored the subrogation agreement between the  
21 insurance company and Worthen, as it related to the  
22 claim in bankruptcy. One of my other partners was



1 actually the chairman of the creditors committee for  
2 that matter. But I worked on that a lot.

3 There was several other --

4 Q That would have been probably in the 1984,  
5 1985 period?

6 A The actual Bevel Bresler matter was, I  
7 believe, in '85. April of '85, I believe that's  
8 right. I could be off one year. I am pretty sure it  
9 was April of '85, right after I got off Supreme  
10 Court.

11 MR. NIELDS: One moment.

12 (Witness conferred with counsel.)

13 THE WITNESS: In connection with the Bevel  
14 Bresler matter as well, there was a derivative  
15 lawsuit filed against the officers and directors of  
16 Worthen Banking Corp., Worthen Bank, and its major  
17 shareholders. And our firm, and me in particular,  
18 defended that case for a long period of time, until  
19 we brought in outside counsel. So those are two  
20 matters, and probably the closest matters I worked on  
21 with the people that you've asked about before.

22 BY MR. GIUFFRA:

1 Q And when would the second matter have been  
2 concluded, the director and officer case?

3 A Well, the director and officer case was  
4 concluded, I believe in '88 or '89. The actual Bevel  
5 Bresler & Shulman matter, we continued -- see, we had  
6 an agreement with the insurance company where they  
7 paid 20 million of the \$52 million loss. And then  
8 they recovered 40 -- approximately 40 percent of  
9 whatever we recovered from the bankruptcy.

10 And so I continued to monitor that  
11 collection so that if we got a payment, I actually  
12 would be talking to the insurance company, so that  
13 wasn't concluded until '91.

14 Q Between January 20, 1993, and your  
15 resignation from the Justice Department in April '94,  
16 did you have any communications with anyone  
17 affiliated with the Lippo Group?

18 A Yes.

19 Q Who would you have spoken to?

20 A James Riadi.

21 Q Anyone else?

22 A No.

1 Q What would the subject matter have been of  
2 your discussion with Mr. Riadi?

3 A How you doing? He was in town, just saying  
4 hi. He had no business before Justice. I might run  
5 into him somewhere and say hi to him.

6 Q So this would have been on a number  
7 occasions you might have seen --

8 A No, it was maybe three or four.

9 Q So approximately three or four occasions  
10 between January 20, 1993 and April '94?

11 A Correct.

12 Q And at no time -- strike that.

13 Did Mr. Riadi ever indicate to you that  
14 he -- strike that.

15 Did Mr. Riadi ever ask you to take any  
16 action or discuss with you -- strike that.

17 Did Mr. Riadi ever discuss with you  
18 anything having to do with business dealings that  
19 Lippo Group or any of its affiliates might have with  
20 the U.S. government in any way?

21 A No.

22 Q Now, after you resigned from the Department

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1 of Justice in April 1994, did there come a time when  
2 you were retained by the Lippo Group?

3 THE WITNESS: I was waiting.

4 MR. NIELDS: I am going to let you answer  
5 that question. It has already been answered on the  
6 public record, and therefore, I will let you answer  
7 that question.

8 THE WITNESS: By the Lippo Group, no.

9 BY MR. GIUFFRA:

10 Q Were you retained by an affiliate of the  
11 Lippo Group?

12 A Yes.

13 Q What was the affiliate of the Lippo Group  
14 that retained you -- go ahead.

15 MR. NIELDS: I just can't remember it,  
16 that's all.

17 MR. KRAVITZ: I have the transcript here.

18 MR. GIUFFRA: I don't think it is.

19 (Witness conferred with counsel.)

20 MR. NIELDS: I think we will just stop at  
21 an affiliate of the Lippo Group.

22 BY MR. GIUFFRA:

1 Q Okay. So you were retained by an affiliate  
2 of the Lippo Group. Just let me see if I can probe  
3 and tell me whether we crossed your line. Were you  
4 retained by a corporate entity, partnership, or an  
5 individual affiliated with the Lippo Group?

6 MR. NIELDS: I will let him answer whether  
7 it was a corporate entity or an individual. I mean,  
8 I really should just stop it here, but I --

9 THE WITNESS: A corporate entity.

10 BY MR. GIUFFRA:

11 Q Do you recall approximately when you were  
12 retained?

13 MR. NIELDS: You can answer.

14 THE WITNESS: Yes.

15 MR. NIELDS: I think you've already  
16 indicated approximately.

17 BY MR. GIUFFRA:

18 Q Summer of 1994?

19 A Yes.

20 Q Do you have an exact -- can you give us a  
21 month?

22 A Yes.

1 Q What month?

2 A June.

3 MR. GIUFFRA: Feel free to object.

4 MR. NIELDS: I feel one coming.

5 THE WITNESS: I do, too.

6 MR. NIELDS: I think we have hit the limit  
7 here.

8 BY MR. GIUFFRA:

9 Q The core entity that was affiliated with  
10 the Lippo Group, was it based in the United States or  
11 outside the United States?

12 MR. NIELDS: He may have already answered  
13 that, but if he hasn't, I just -- I think we are just  
14 going to stop.

15 MR. KRAVITZ: I don't think he did. I am  
16 looking at the transcript.

17 MR. GIUFFRA: No, he didn't. Can we go off  
18 the record.

19 (Discussion off the record.)

20 MR. NIELDS: What I just said off the  
21 record is I don't think this client would want Mr.  
22 Hubbell to answer any more questions about the

1 representation or the relationship that he has  
2 already answered, and consequently we will draw the  
3 line here.

4 THE WITNESS: Can I talk to him for one  
5 second?

6 MR. GIUFFRA: Sure.

7 (Witness conferred with counsel.)

8 MR. NIELDS: I don't want to leave any  
9 impression, because it would be incorrect, that  
10 either Mr. Hubbell or I have spoken to this client,  
11 indeed, at any time since Mr. Hubbell entered  
12 prison. But what I just said is our very strong,  
13 Mr. Hubbell's very strong understanding about what  
14 the client would have wished. Okay.

15 Was it your understanding, Mr. Hubbell,  
16 that the client wanted the fact that you had been  
17 retained and the nature of the work that you were  
18 performing for them to be kept confidential?

19 MR. KRAVITZ: Like any other client.

20 MR. NIELDS: I think that is --

21 BY MR. GIUFFRA:

22 Q Is that correct, Mr. Hubbell?

1 A I am not going to talk about it. I am just  
2 going to tell you I ain't going to talk about it.

3 MR. NIELDS: Hold on.

4 THE WITNESS: I need to go to the bathroom  
5 anyway, so give me one minute.

6 MR. GIUFFRA: Off the record.

7 (Discussion off the record.)

8 MR. GIUFFRA: Back on.

9 MR. NIELDS: My client's position is  
10 exactly the same as mine is as a lawyer, which is  
11 that he treats as confidential all matters relating  
12 to his clients, unless they become a matter of public  
13 record. That's his understanding of the wishes of  
14 his clients, it would be mine, too, and this is no  
15 exception.

16 MR. GIUFFRA: Mr. Hubbell is not going to  
17 answer the question about whether this affiliate of  
18 the Lippo Group that retained him in June 1994 was a  
19 U.S. entity or foreign entity?

20 MR. NIELDS: Yes, he respectfully declines  
21 for the reasons I stated earlier.

22 MR. GIUFFRA: Okay.



1 MR. KRAVITZ: While you are going through  
2 your notes, I don't want to waste a lot of time on  
3 this, but I want to say for the record, I would note  
4 a further objection. I haven't seen any link between  
5 any of these questions and any subjects covered by S.  
6 Res. 120.

7 MR. GIUFFRA: I think it goes to, with all  
8 respect to Mr. Hubbell, his credibility. I think  
9 that, over time, Mr. Hubbell's story and testimony  
10 has evolved and particularly as we have got  
11 especially new documents. And the question arises as  
12 to whether the Committee has gotten the full picture  
13 of what Mr. Hubbell knows and whether there were any  
14 sort of financial arrangements that might, in some  
15 way, have affected or impacted upon Mr. Hubbell's  
16 testimony.

17 MR. KRAVITZ: You have yet to ask any  
18 questions relevant to that last point.

19 MR. NIELDS: Yes, I would like to -- I'm  
20 sorry, but I am going to have to respond to that. I  
21 respectfully disagree that there is anything in  
22 Mr. Hubbell's cooperative attitude towards this

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1 Committee and its questioning that suggestion any  
2 lack of credibility at all. You will not find a  
3 single honest person in the world who doesn't have  
4 his recollection refreshed by documents and give more  
5 and better testimony the more documents he is exposed  
6 to; that is what Mr. Hubbell has done.

7 He has been fully cooperative from day one  
8 with this Committee and has responded to every  
9 question, save those on this subject. And I have no  
10 objection to your asking him questions that do go to  
11 whether anybody has offered him anything or suggested  
12 that they would offer him anything in return for some  
13 sort of testimony.

14 MR. KRAVITZ: Neither do I.

15 MR. GIUFFRA: Let's continue.

16 BY MR. GIUFFRA:

17 Q Now, your representation of this affiliate  
18 of the Lippo Group was concluded in early December  
19 1994; is that right?

20 A I am not going to answer the question.

21 Q I believe you testified at the hearing on  
22 February 7th.

1 "Question: Mr. Chertoff: Over what period  
2 of time -- how long did the representation last?

3 "Answer: Mr. Hubbell: It lasted until I  
4 pled guilty in 1994.

5 "Question: Which was when?

6 "Answer: December 1994."

7 So you answered that question at the public  
8 hearing; is that accurate?

9 A It is accurate. I don't like answering  
10 it. I'm sorry I did.

11 Q Did you conclude the work that you were --  
12 strike that.

13 Did you conclude the work you were involved  
14 in for the Lippo Group in December 1994 when you  
15 ceased working for them?

16 MR. NIELDS: I again, respectfully,  
17 Mr. Hubbell will decline to answer for reasons stated  
18 earlier.

19 BY MR. GIUFFRA:

20 Q Between June 1994 and early December 1994,  
21 approximately how many hours did you spend working  
22 for the Lippo Group?

1 MR. NIELDS: Same objection.

2 MR. GIUFFRA: Not going to answer the  
3 question?

4 MR. NIELDS: Yes, correct.

5 BY MR. GIUFFRA:

6 Q Between June 1994 and early December 1994,  
7 how much were you paid by this affiliate of the Lippo  
8 Group for the services that you rendered?

9 MR. NIELDS: Same objection and reason for  
10 respectfully declining to answer.

11 MR. GIUFFRA: I would just note by way of  
12 significance of those questions for the record that,  
13 if Mr. Hubbell worked 100 hours and received \$50,000,  
14 that would obviously be of evidentiary significance  
15 as opposed to, for example, if he worked three hours  
16 and received \$600,000.

17 MR. KRAVITZ: What's the evidentiary  
18 significance of that, Bob, because I don't see it? I  
19 take it from your silence that you can't answer that  
20 question.

21 MR. GIUFFRA: No, I think common sense.

22 MR. KRAVITZ: When I say "evidentiary

1 significance," I mean anything that could possibly be  
2 covered by S. Res. 120. No response.

3 MR. GIUFFRA: Although there is no need for  
4 lawyer jousting here, I think, with regard to other  
5 issues before the Committee, questions going to their  
6 credibility have been clearly deemed by the Minority  
7 to be relevant particularly when it was -- it suited  
8 the Minority's interest.

9 I would cite the example -- if you would  
10 let me finish, of Jean Lewis, for one. And I think  
11 that statements that have been made with regard to  
12 Mr. Hale fall into the same category.

13 MR. KRAVITZ: I am going to make a brief  
14 statement on the record because I have said a few  
15 things off the record that I think need to be on the  
16 record.

17 I agree completely that if anything  
18 relating to the Lippo Group and Mr. Hubbell's  
19 representation or Mr. Hubbell's representation of an  
20 affiliate of the Lippo Group is relevant to the  
21 credibility of Mr. Hubbell as a witness, as to  
22 relevant matters under our Resolution, that that's a

1 proper line of inquiry.

2 I have suggested to Mr. Giuffra off the  
3 record that if he wants to look into the question, as  
4 Mr. Chertoff indicated was his intention, at this  
5 hearing on February 7, as to whether anyone promised  
6 Mr. Hubbell employment or some kind of payment after  
7 he got out of prison as a means for affecting the  
8 degree of cooperation that Mr. Hubbell provided,  
9 either to the Office of the Independent Counsel or to  
10 this Committee or to any other investigative agency,  
11 I have suggested to Mr. Giuffra that I think that's  
12 perfectly appropriate because that would go to the  
13 question of Mr. Hubbell's counsel, to me, would go to  
14 the question of Mr. Hubbell's credibility.

15 These other questions I don't see the  
16 connection between what -- any possible answers would  
17 be and Mr. Hubbell's credibility. I have asked  
18 Mr. Giuffra on the record to state such a connection  
19 and he has chosen not to or may be unable to, but he  
20 hasn't said anything.

21 MR. GIUFFRA: The relevance of this has  
22 already been stated for the record and also at the

1 hearing on February 7th. And if you would let me  
2 finish the examination, I will get to those other  
3 questions as well. I am trying to lay a foundation  
4 for what Mr. Hubbell did, how much he was paid by the  
5 Lippo Group. Back to my questions.

6 BY MR. GIUFFRA:

7 Q Between June '94 and early December 1994,  
8 what was the nature of the work that you performed  
9 for the Lippo Group?

10 MR. NIELDS: Same objection.

11 MR. GIUFFRA: Affiliate. Not going to  
12 answer?

13 MR. NIELDS: Correct, for the same reasons.

14 MR. KRAVITZ: He also didn't work for the  
15 Lippo Group.

16 MR. GIUFFRA: I added "an affiliate of the  
17 Lippo Group."

18 MR. KRAVITZ: No, he didn't.

19 MR. GIUFFRA: Why don't we spend the time  
20 reading back the question.

21 MR. NIELDS: Let's not spend the time.

22 Keep going.

1 MR. GIUFFRA: Okay.

2 BY MR. GIUFFRA:

3 Q All right, Mr. Hubbell, will you answer the  
4 question as to whether the work involved any kind of  
5 litigation matter?

6 MR. NIELDS: Same objection; respectfully  
7 decline to answer for the same reasons we stated  
8 previously.

9 MR. GIUFFRA: Won't answer whether it  
10 involves pending litigation or anticipated  
11 litigation?

12 MR. NIELDS: Correct.

13 BY MR. GIUFFRA:

14 Q Did this work involve matters you had  
15 previously worked on for the Lippo Group or its  
16 affiliate while you were at the Rose Law firm?

17 MR. NIELDS: Same objection; respectfully  
18 decline to answer for the same reason.

19 BY MR. GIUFFRA:

20 Q Did this work involve lobbying or  
21 government relations work?

22 MR. NIELDS: Now, I know we talked off the



1 record before this hearing that that might be a  
2 question that we could answer if it would help you.  
3 But that was under the assumption that that was the  
4 only question. And I see that it clearly will not be  
5 and I don't want to start down a slippery slope, so  
6 he will decline to answer that as well.

7 MR. GIUFFRA: He will decline to answer  
8 questions whether or not the work he performed for  
9 the Lippo Group involved lobbying Clinton  
10 Administration officials?

11 MR. NIELDS: Yes, I can't start playing 20  
12 questions simply because the answer to each question  
13 might be in the negative.

14 BY MR. GIUFFRA:

15 Q Mr. Hubbell, did this work involve lobbying  
16 any agent or employee of any governmental agency?

17 MR. NIELDS: Respectfully declines to  
18 answer for the same reason, notwithstanding our  
19 discussion previously.

20 MR. GIUFFRA: Okay. Off the record.

21 (Discussion off the record.)

22 BY MR. GIUFFRA:

1 Q Did anyone assist you in connection with  
2 the services that you performed for the affiliate of  
3 the Lippo Group?

4 MR. NIELDS: Same objection.

5 MR. GIUFFRA: The question is whether other  
6 people were working on the matter besides  
7 Mr. Hubbell.

8 MR. NIELDS: I just -- I don't know where  
9 to cut off the line other than at the beginning.

10 BY MR. GIUFFRA:

11 Q With whom did you discuss, other than  
12 persons who were affiliated with the Lippo Group or  
13 your immediate family members, the fact that you had  
14 been retained by a group -- by the affiliate of that  
15 group in June of 1994 and your counsel -- let me  
16 rephrase the question.

17 Other than your counsel, someone who was  
18 employed by this affiliate of the Lippo Group, or  
19 someone in your immediate family, did you discuss  
20 with anyone else between April '94 and December '94  
21 the fact that you were working for this Lippo Group  
22 affiliate?

1 MR. NIELDS: I have to object to it in the  
 2 form you asked it. If you want to get at the form of  
 3 the question of whether -- which I suggest might be  
 4 getting close to the relevant question to be asked --  
 5 if you want to ask whether he discussed this with  
 6 the -- with, for example, the Clintons or somebody  
 7 that is -- or whether he has any reason to believe  
 8 that they were even aware of the fact that he had  
 9 been hired, that's fine.

10 But your question is way too broad. It  
 11 sweeps in everybody that he may have worked with or  
 12 discussed the matter. Conversations in the course  
 13 and scope of his work would all have been picked up  
 14 by that question, so I object to it in the form you  
 15 laid it.

16 MR. GIUFFRA: Well, I will parse it down.

17 BY MR. GIUFFRA:

18 Q Did you discuss with anyone at the Rose Law  
 19 Firm that you were doing work for the Lippo Group,  
 20 this Lippo Group affiliate, between April '94 or  
 21 early December '94?

22 MR. NIELDS: All right, he can answer this

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1 question, but if we are going to play 20 questions,  
 2 let's get at the relevant question. He will respond  
 3 to it. We can't go on with categories of people --

4 MR. GIUFFRA: We can't also choose  
 5 categories of people who you've picked out, either.

6 THE WITNESS: Did I talk to anybody at the  
 7 Rose Law Firm about?

8 BY MR. GIUFFRA:

9 Q The fact that you were doing work for this  
 10 Lippo Group affiliate.

11 A No.

12 Q Did you talk to Jim Blair about the fact  
 13 that you were doing work for this Lippo Group  
 14 affiliate?

15 MR. NIELDS: I really think, respectfully,  
 16 for reasons of time as well as for reasons of  
 17 relevance, that you ought to respectfully decline to  
 18 answer that question.

19 BY MR. GIUFFRA:

20 Q Did you discuss with Beryl Anthony the fact  
 21 that you had been retain by the Lippo Group  
 22 affiliate?

1 MR. NIELDS: Same. We are just doing the  
2 same thing.

3 MR. GIUFFRA: Okay.

4 BY MR. GIUFFRA:

5 Q Did you discuss with anyone employed at the  
6 White House the fact that you had been retain by this  
7 Lippo Group affiliate?

8 THE WITNESS: I can answer that. The  
9 answer is no.

10 BY MR. GIUFFRA:

11 Q Did you discuss with anyone at the  
12 Justice --

13 MR. NIELDS: I just want to put on the  
14 record that we did talk about this in advance and in  
15 an effort to be cooperative and helpful, I informed  
16 you that you could ask him and he would answer the  
17 question whether he has any reason to believe that  
18 people in the White House --

19 MR. GIUFFRA: I will ask him that  
20 question.

21 BY MR. GIUFFRA:

22 Q Did you --

1 MR. NIELDS: To finish my point, were aware  
2 of the fact that he had been retained by Lippo.

3 MR. GIUFFRA: You can answer that question.

4 THE WITNESS: You started with Justice, but  
5 didn't finish the question.

6 BY MR. GIUFFRA:

7 Q As far as you know, was anybody at the  
8 white House aware of the fact that you had been  
9 retained by the Lippo Group in June of 1994?

10 A No.

11 Q During the course of your representation of  
12 the Lippo Group affiliate, do you have any knowledge  
13 as to whether anybody at the white House became aware  
14 of the fact that you were doing work for this Lippo  
15 Group affiliate?

16 A They didn't get it from me.

17 Q Do you know whether they got it from anyone  
18 who worked for the Lippo Group?

19 A I don't know.

20 Q One way or the other, I didn't tell anyone  
21 other than my wife.

22 MR. NIELDS: I think you have now gotten an

1 answer to all the questions I objected to, but there  
2 you have it.

3 THE WITNESS: I assume he is talking about  
4 people in the government.

5 MR. GIUFFRA: Now he's got his answer out  
6 so we have to be sure it is clear.

7 BY MR. GIUFFRA:

8 Q You testified the only person you told you  
9 had been retained by the Lippo Group was your wife?

10 A Right. That was employed in the  
11 government.

12 Q That's employed in the federal government?

13 A Federal, state, city.

14 Q And your wife's position at that point was?

15 A She was Assistant to the Secretary of  
16 Interior. Still is.

17 Q So we are clear, your wife is the only  
18 person in the government, state, federal, local, you  
19 told that you have been retained by the Lippo  
20 Group --

21 A Correct.

22 Q -- affiliate?

1 And you don't know whether other people  
2 might be in the government became aware of that fact  
3 through some other means?

4 A Correct.

5 Q And you are not going to answer the  
6 question whether or not the work you did had any  
7 interface with government?

8 MR. NIELDS: I have already interposed an  
9 objection.

10 BY MR. GIUFFRA:

11 Q And the President and Mrs. Clinton, were  
12 they aware of the fact that you had been retained --  
13 let's get it on the record -- by the Lippo Group  
14 affiliate?

15 MR. NIELDS: You can answer that.

16 THE WITNESS: Not to my knowledge. I  
17 didn't tell them.

18 BY MR. GIUFFRA:

19 Q Do you know whether anyone else told them?

20 A No. The whole point, I didn't tell them  
21 and I don't know that they know it at all in any  
22 way.



1 MR. GIUFFRA: I have concluded my  
2 examination. Thank you.

3 MR. KRAVITZ: I have a few questions.

4 EXAMINATION

5 BY MR. KRAVITZ:

6 Q Mr. Hubbell, I want to direct your  
7 attention back to late July 1993, during the period  
8 of time following Mr. Foster's death. You testified  
9 that at some point you became aware or you heard  
10 something about a note of Mr. Foster's or some  
11 writing of Mr. Foster's having been found.

12 When you first heard about Mr. Foster's  
13 note, did you have an understanding as to whether  
14 that note was yet in the possession of the Department  
15 of Justice?

16 A Yes.

17 Q What was your understanding?

18 A That it was.

19 Q Now, you testified previously that you are  
20 not sure who it was who first told you about having  
21 heard about the note; is that correct?

22 A That's correct.

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1 Q It might have been Nancy McFadden and it  
2 might have been someone else?

3 A It could have been just about anybody.

4 Q You also told us that, at some point after  
5 you first heard about the existence of Mr. Foster's  
6 note, you spoke with Mr. Heymann at the Department of  
7 Justice?

8 A That's correct.

9 Q How much time passed between the time that  
10 you first heard about the existence of Mr. Foster's  
11 note, and the time that you spoke with Mr. Heymann?

12 A As soon as I could get ahold of Phil,  
13 which, my recollection is, almost immediately. I  
14 would have -- when I heard about it, my recollection  
15 is -- I mean, it might have been an hour, but my  
16 recollection was I picked up the phone and said I  
17 need to come talk to you.

18 Q Now, correct me if I am wrong, but my  
19 memory of your earlier testimony this morning was  
20 that you believe you spoke with Mr. Heymann for the  
21 first time about Foster's note in the morning; is  
22 that correct?

1 A That's my memory, yes.

2 Q Based on that memory, can you tell us  
3 whether the first time that you heard about the  
4 existence of this note, meaning before the time you  
5 talked to Mr. Heymann about the note, was that the  
6 same day or a previous day as the day that you talked  
7 to Mr. Heymann?

8 A My recollection, and I mean Phil might  
9 know -- remember better than I, but my recollection  
10 was that it was a morning that I would have heard in  
11 the morning. I would have picked up the phone and  
12 said Phil, I need to come talk to you. I would have  
13 immediately, as soon as he said come on down, I would  
14 have walked down to his office. I remember being in  
15 his office, when I raised the issue about the  
16 "note."

17 Q Did you hear anything about the existence  
18 of Mr. Foster's note before the time that White House  
19 officials showed the note to Janet Reno and Phil  
20 Heymann over at the White House, and then provided  
21 the note to officials of the United States Park  
22 Police?

1 A I don't believe so. I don't know when they  
2 showed -- I didn't know they showed to it Janet until  
3 I read it in the paper. I was always dealing with  
4 Phil.

5 Q But your understanding is that, at the  
6 first time that you heard about the existence of the  
7 note, the note had already been disclosed to the  
8 Department of Justice; is that right?

9 A I heard -- yes. I heard about the note. I  
10 called Phil and I said Phil, I need to come talk to  
11 you. I went downstairs. Phil, what's this about the  
12 note? Yes, yes. Well, can I see it? Let me check  
13 with Dave. Leaves the office, he goes and checks  
14 with Dave and said come on.

15 Then I walked down -- Dave's office was  
16 down the hall from his, right across the conference  
17 room, across the conference room, across the  
18 reception into Dave's office.

19 Q It was at that time David Margolis showed  
20 you a transcription of the note?

21 A Right.

22 Q And so based on fact that Mr. Margolis

1 showed you a transcription of the note, it is obvious  
2 to you that the Department of Justice had had the  
3 note disclosed to it by this time?

4 A And at that point, I read it --

5 MR. NIELDS: You have to say yes.

6 THE WITNESS: Yes. I read it, I panicked,  
7 Dave panicked, he left and came back and said the  
8 Park Policeman had transcribed the scraps of paper he  
9 told me had been torn up, and this is the Park  
10 Policeman's handwriting, and that resolved my panic.

11 BY MR. KRAVITZ:

12 Q Okay. I really have one more question and  
13 that's just to clarify your use of the word "panic."  
14 I want to be sure the record is not misleading.

15 The reason you panicked when you saw this  
16 transcription was you didn't realize it was a  
17 transcription, but you did notice that the  
18 handwriting was not Mr. Foster's?

19 A Right.

20 Q There was nothing about the contents of the  
21 note that caused you to panic?

22 A The contents of the note made me very sad;

1 they didn't cause me to panic.

2 MR. KRAVITZ: That's all I have.

3 MR. GIUFFRA: Thank you very much.

4 (Whereupon, at 2:05 p.m., the deposition  
5 was concluded.)

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WEBSTER L. HUBBELL

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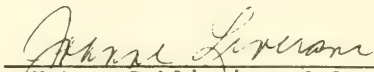
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

JULY 31, 2000





**DEPOSITION OF JAMES M. LYONS  
IN RE: S. RES. 120**

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**WEDNESDAY, JUNE 5, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of JAMES M. LYONS, called for examination pursuant to notice of deposition, at 1:22 p.m. in Room 640-A of the Hart Senate Office Building, before CAROL PATTERSON, a Notary Public within and for the State of Colorado, when were present:

JOSEPH A. JIAMPIETRO, Esq.  
Majority Counsel  
LANCE COLE, Esq.  
Minority Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

**APPEARANCES**

HAROLD A. HADDON, Esq.  
Hadon, Morgan & Foreman, P.C.  
150 East Tenth Avenue  
Denver, Colorado 80203  
On behalf of the Deponent.

ALSO PRESENT: JENNIFER M. SWARTZ  
STEVEN BANKLER

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## P R O C E E D I N G S

MR. JIAMPIETRO: Good afternoon. My name is Joseph Jiampietro. I am Majority Counsel to the Senate Banking Committee. With me today Steven Bankler, Staff to the Majority, and Jennifer Swartz, Staff to the Majority. On behalf of the Minority is Lance Cole, Deputy Special Counsel to the Minority.

This deposition is being conducted pursuant to Senate Resolution 120. The Resolution establishes a Special Committee administered by the Senate Banking Committee to conduct an investigation into Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, and other related matters.

Section 1.B.3.b. of Resolution 120 authorizes investigation and public hearings into the activities, investments and tax liability of Whitewater Development Corporation and, as related to Whitewater Development Corporation, of its officers, directors and shareholders. These subjects will be the primary focus of today's deposition.

The testimony will be taken under oath and

1 the stenographer will prepare a record of questions  
2 and answers. If you sign a confidential agreement, a  
3 copy of the transcript will be made available to you  
4 for corrections. It must be returned to the  
5 Committee with any corrections.

6 Prior to any public hearings you will be  
7 provided with a copy of your deposition transcript  
8 four days in advance of your testimony for the  
9 limited purpose of preparing yourself for testimony  
10 at the public hearings. A copy of the transcript  
11 will be Federal Expressed to you as soon as we  
12 receive it.

13 You may be represented by counsel, and  
14 would counsel at this point please state an  
15 appearance.

16 MR. HADDON: My name is Harold Haddon,  
17 H-a-d-d-o-n.

18 MR. JIAMPIETRO: Pursuant to the  
19 procedures set forth in Resolution 120, objections to  
20 the form of questions will be noted for the record.  
21 There are two grounds upon which counsel may object  
22 and give instruction not to answer, privilege and

1 scope. The Committee Chairman will rule on  
2 objections where the witness refused to answer a  
3 question.

4 I will note for the record that Mr. Lyons  
5 was previously deposed by the Special Committee on  
6 November 2nd, 1995. We do not intend to cover all of  
7 the same issues that were addressed in that  
8 deposition, but for the sake of a complete record we  
9 may ask some of the same introductory questions, and  
10 we may ask for some clarifications on questions asked  
11 during the prior deposition.

12 Would you please swear the witness.  
13 Whereupon,

14 JAMES M. LYONS  
15 having first been duly sworn by the Colorado Notary  
16 Public, was examined and testified as follows:

17 MR. HADDON: The witness has been sworn.

18 EXAMINATION

19 BY MR. JIAMPIETRO:

20 Q Mr. Lyons, have you had any discussions  
21 with anyone, other than counsel, regarding any issues  
22 related to Whitewater since your November 2nd, 1995

1 deposition by the Special Committee?

2 A I have spoken with Mr. Haddon, of course,  
3 and I have had conversations from time to time with  
4 Mr. Cole generally related to scheduling.

5 MR. COLE: And, Mr. Lyons, you asked me  
6 whether you would be required to appear at a hearing  
7 here, and I told you that to the best of my knowledge  
8 the Special Committee and the Majority in particular  
9 had not scheduled a hearing date for you, and Mr.  
10 Jiampietro can correct me on that if I was incorrect  
11 in the information that I gave you.

12 MR. JIAMPIETRO: That is correct as I  
13 understand it.

14 BY MR. JIAMPIETRO:

15 Q Other than Mr. Cole and Mr. Haddon, have  
16 you had any discussions with anyone else since your  
17 last deposition by the Special Committee regarding  
18 any issues related to Whitewater?

19 A I may have had discussions with other  
20 persons from time about the fact that my deposition  
21 was taken and in general what the subject matter was,  
22 but, no, I've had no other conversations.

1 Q You said you may have had conversations  
2 with other persons about the fact that your  
3 deposition had been taken and the subject matter of  
4 the deposition. Do you recall who those persons  
5 were?

6 A Well I'm sure I talked to my wife about  
7 it, and I may have mentioned it to one or more of my  
8 partners and friends.

9 Q Anyone from the White House?

10 A I may have mentioned it to Bruce Lindsey  
11 in terms of the fact that my deposition was taken and  
12 what the general subject matter was, and I may have  
13 mentioned it and may have had discussions with David  
14 Kendall.

15 MR. COLE: Majority Staff is conferring.

16 BY MR. JIAMPIETRO:

17 Q With regard to your discussions with Mr.  
18 Lindsey and Mr. Kendall, do you have any specific  
19 recollection as to the substance of those  
20 discussions?

21 A No.

22 Q I would like you to refer to documents

1 Bate stamped JML 077 through JML 083.

2 A All right, I have it.

3 Q Would you briefly describe this document  
4 for the record.

5 A It speaks for itself. It's a letter I  
6 wrote to Governor and Mrs. Clinton transmitting the  
7 summary report prepared by Patten, McCarthy &  
8 Associates.

9 Q And once again just for the sake of a  
10 complete record, the report by Patten, McCarthy  
11 addressed what issues?

12 A The report speaks for itself.

13 Q Page Bate stamped JML 079, which is the  
14 first page of the report by Patten, McCarthy dated  
15 March 23rd, 1992, states that "The scope of our  
16 consulting engagement was to attempt to determine  
17 WDC's current financial condition, to ascertain the  
18 present investment of the related parties in WDC,  
19 including any loans and advances by the related  
20 parties to WDC, and to analyze tax benefits realized  
21 by the Clinton's."

22 Who approached you to prepare this report?

---

10

1 A I didn't prepare this report. This report  
2 that you just read was prepared by Patten, McCarthy &  
3 Associates.

4 Q How did Patten, McCarthy & Associates come  
5 to prepare the report?

6 A I engaged them on behalf of Governor and  
7 Mrs. Clinton to do that.

8 Q Who approached you to engage a firm to  
9 undertake this study?

10 A I don't know that anybody approached me to  
11 do that.

12 Q Did you on your own initiative engage  
13 Patten, McCarthy to prepare a report?

14 A It was my view, based on a preliminary  
15 analysis of the documents and the transactions, that  
16 we needed accounting help to assist in a financial  
17 reconstruction, and I made that recommendation to the  
18 campaign staff and to Governor and Mrs. Clinton, and  
19 they agreed and they authorized me on behalf of  
20 Governor and Mrs. Clinton to engage Patten, McCarthy  
21 & Associates, which I did.

22 Q Who first approached you to investigate



1 issues relating to Whitewater Development  
2 Corporation?

3 A I don't recall.

4 Q You noted that a preliminary analysis of  
5 certain documents had been done prior to the  
6 engagement of Patten, McCarthy & Associates.

7 A That's correct.

8 Q Who conducted that preliminary analysis?

9 A I did.

10 Q Can you please describe that preliminary  
11 analysis for us.

12 A Yes. I looked at the documents and  
13 information that was available that had been  
14 assembled by campaign staff after this issue had been  
15 raised by Mr. Jeff Gerth of the New York Times and  
16 determined that we needed financial assistance in  
17 reconstructing this investment, if you will.

18 Q When were you first approached by someone  
19 related to the Clinton campaign to undertake this  
20 investigation?

21 A I don't know for certain, but I think it  
22 was sometime in February or early March of 1992.

---

12

1 Q How did Patten, McCarthy come to be  
2 involved in the preparation of the report that was  
3 issued on March 23rd, 1992?

4 A As I said earlier, I engaged them on  
5 behalf of Governor and Mrs. Clinton to do that.

6 Q Did you have a prior relationship with the  
7 firm or its principals?

8 A Yes. I had worked with them before.

9 Q What is your current relationship, if any,  
10 with the Patten, McCarthy or its principals?

11 MR. COLE: Could I ask before Mr. Lyons  
12 answers, Mr. Jiampietro, how that question is within  
13 the scope of Senate Resolution 120?

14 MR. JIAMPJETRO: I'm trying to understand  
15 the extent of investigations, both previous and  
16 ongoing, with regard to Whitewater Development  
17 Corporation. It's a preliminary question  
18 establishing whether or not there is a relationship,  
19 an ongoing relationship between Mr. Lyons and the  
20 firm of Patten, McCarthy.

21 MR. COLE: But I take it that you're not  
22 inquiring into what work Mr. Lyons or his firm may or

1 may not be doing. My understanding is that Patten,  
2 McCarthy & Associates doesn't exist any more.

3 Is that correct, Mr. Lyons?

4 THE WITNESS: That's my understanding as  
5 well.

6 MR. COLE: You're probably not doing any  
7 work with them presently then.

8 THE WITNESS: Well the successor firm,  
9 Baird, Kurtz & Dobson, which I believe acquired or  
10 made some sort of an arrangement with Patten,  
11 McCarthy & Associates, is one with which I am  
12 currently not doing any work, but with respect to  
13 which members of my firm on behalf of clients of our  
14 firm may be doing work. The firm, Patten, McCarthy &  
15 Associates, has been and continues to be recognized  
16 as one of the premier financial consulting firms in  
17 this region.

18 BY MR. JIAMPIETRO:

19 Q Who paid the fees of Patten, McCarthy?

20 A As I recollect, they were paid by the  
21 campaign pursuant to an opinion from the campaign's  
22 general counsel.

---

14

1 Q Did you charge the campaign any fees for  
2 your services?

3 A I did not.

4 Q What was your role in the preparation of  
5 the report?

6 A My role was basically to see that Patten,  
7 McCarthy and Mr. Patten and Mr. Weese had access to  
8 as much of the documents and materials evidencing the  
9 Whitewater transactions over a period of years as I  
10 could possibly get them from a number of sources to  
11 see that generally the report was prepared consistent  
12 with what our expectations were in terms of the  
13 purposes for the report, and to see that it was  
14 generated as promptly and as comprehensively as  
15 possible.

16 Q What were the expectations or purposes for  
17 preparing the report?

18 A Well they are as set out in Mr. Patten's  
19 letter dated March 23rd, 1992. But in general they  
20 were to determine over this period of time, basically  
21 from 1978 through 1992, to the extent that documents  
22 and information were available, one, to what extent

1 the Clinton's had invested money, two, to what extent  
2 they had been involved, if at all, in the management  
3 of Whitewater Development Corporation and, three, to  
4 what extent they had either received or lost money as  
5 a result of this investment.

6 Q You noted that you received documents from  
7 various sources in order to prepare the report.  
8 Would you please describe how you obtained those  
9 documents.

10 A Some of them had already been gathered by  
11 campaign staff as a result of the inquiry raised by  
12 Mr. Gerth in March, I believe it was early March,  
13 maybe late February, and, in addition to that  
14 material, I received and gathered material myself  
15 from the Clinton's constituting their records, to the  
16 extent they had them, of this investment over the  
17 years.

18 Q Who on the campaign staff provided you  
19 with documents?

20 A Well there were a number of people who  
21 were involved in gather documents, but the principal  
22 person that I relied on in that regard was Loretta

1 Lynch. There are other people I think who helped her  
2 from time to time.

3 Q Other than Ms. Lynch, who else would have  
4 provided you directly with documents?

5 A Well she was assisted by several campaign  
6 staffers whose names I frankly don't remember. They  
7 were volunteers I think who worked with her. There  
8 was a young man named Jonathan Foster, who I believe  
9 helped her, and I got information personally and  
10 directly from Mrs. Clinton through Carolyn Huber, who  
11 was her assistant I think and secretary at the Rose  
12 Law Firm, and Bill Kennedy at the Rose Law Firm.

13 Q When would you have received these  
14 documents?

15 A I don't know, sometime in early March  
16 1992, maybe late February.

17 Q When did the substantive work on the  
18 report begin?

19 A Oh, I don't know. I don't have a date.  
20 Mr. Norris came down to Little Rock and began the  
21 field work in early March. I can't tell you when.

22 Q When would the work on the report have

1 terminated?

2 A I'm sorry, I referred to him as Mr.  
3 Norris. It's Mr. Weese. His name is Norris Weese.

4 I think the work finished right at or  
5 about the time that Patten, McCarthy furnished me  
6 their report on March 22nd or 23rd.

7 Q Who performed work on the report?

8 A Mr. Weese and Mr. Patten.

9 Q Did you perform any substantive work on  
10 the report?

11 A No. My role was not to provide any  
12 substantive input to the conclusions or the review  
13 that we asked Patten, McCarthy to undertake, which,  
14 by the way, also included, to the extent it could be  
15 determined from the documents and other material,  
16 whether or not the Clinton's had been at risk in this  
17 investment, which we concluded in fact they were.

18 Q Documents Bate stamped JML 077 through 078  
19 is a letter from you to Governor and Hillary Rodham  
20 Clinton dated March 23rd, 1992. It's a cover letter  
21 to the report and transmits the report to them; is  
22 that correct?

---

18

1 A Yes, that's a fair statement.

2 Q Why didn't the campaign just hire Patten,  
3 McCarthy to prepare the report?

4 A I don't know.

5 Q Who made the decision that you would be an  
6 intermediary between the campaign and Patten,  
7 McCarthy?

8 A I don't think I was an intermediary. I  
9 think that I had been asked to look into this, and I  
10 concluded that I needed help, as I described earlier,  
11 help of a professional and experience basis.

12 Q How many versions of the report were  
13 prepared?

14 A There is a report dated March 23rd, 1992,  
15 and there is a summary of the report which bears the  
16 same date. The conclusions, by the way, are  
17 identical.

18 Q The report Bate stamped JML 084 through  
19 093 is the complete report that you have referenced;  
20 is that correct?

21 A That is the report that was prepared on  
22 the date indicated, March 23rd. For your reference,



1 the summary to that report begins at JML 079.

2 Q The notation in the upper-right-hand  
3 corner of JML 084, is that your handwriting?

4 A It is.

5 Q Would you please read the notation.

6 A It says "Not released," and then there is  
7 a phone number, "399-4547."

8 Q Whose phone number is that?

9 A I don't recognize it.

10 Q Why wasn't this version of the report  
11 released?

12 A I don't know.

13 Q Whose decision was it not to release this  
14 report?

15 A Well the report has been released and has  
16 been in the public domain now for a number of years.  
17 I assume you're asking me why it wasn't released on  
18 March 23rd, 1992?

19 Q That is correct.

20 A I don't know the answer to that.

21 Q Did someone in the campaign direct you not  
22 to release this report?

---

20

1 A Well my communications were with my client  
2 and not with the campaign, and this information was  
3 transmitted by me to the Clinton's.

4 Q Did the Clinton's tell you not to release  
5 this report?

6 A I don't recall discussing that with them.

7 Q Please refer to pages Bate stamped JML 087  
8 through 090.

9 A All right.

10 Q Would you describe, not in detail, but  
11 just generally this section of the report.

12 A Final observations.

13 Q Are these the conclusions reached by  
14 Patten, McCarthy with regard to the investigation?

15 A No. I think they are what they say they  
16 are, observations.

17 Q How many observations are there?

18 A Well on pages 087 through 090 there are  
19 nine numbered observations.

20 Q Would you please refer to pages Bate  
21 stamped JML 080 through 081.

22 A 080 through 081, yes.

1 Q Am I correct in describing this as the  
2 observations of the summary report?

3 A Yes, I think that's right.

4 Q There are four observations; is that  
5 correct?

6 A That's correct.

7 Q You noted previously that the observations  
8 were the same in both reports. Doesn't this suggest  
9 that they are not the same?

10 A No, I didn't say that, counselor. You've  
11 got to be careful and listen to what I say. What I  
12 said was the conclusions of the two report are  
13 identical. You're asking me about observations and  
14 not conclusions.

15 Q Where are the conclusions in the report?

16 A In the body of the report. You have to  
17 read it in its entirety as it was intended.

18 Q As I see it, there are a number of  
19 sections in the report. There is a Related Party  
20 section, a Background section, an Available Records  
21 section, an Analyses and Reconstruction section and  
22 an Observations section.

---

22

1 A Is that a question?

2 Q Reading through the report the only  
3 conclusions I find are in the Observations section.  
4 I would be interested if you could point out some  
5 other conclusions in the report for me.

6 A The report, counsel, is meant to be read  
7 in its entirety, including my cover letters, and I  
8 would suggest that the conclusions of the report  
9 speak for themselves both in the summary and in the  
10 other report.

11 Q Is all of the information in the report  
12 included in the summary?

13 A The financial conclusions reached are  
14 identical in the report and the summary.

15 Q Was any information excluded from the  
16 summary?

17 A There are observations that are included  
18 in the report that are not included in the summary.  
19 That's why we did a summary.

20 Q Who made the decision to exclude certain  
21 observations?

22 A Well the consequence of the observations

1 you must understand are implicit and contained in the  
2 conclusions. The decision to have a summary report  
3 was mine.

4 Q Why did you decide to produce a summary  
5 report?

6 A Well we decided to write a summary report  
7 because frankly we believed it would be easier for  
8 the Clinton's to understand and follow it.

9 Q So the report was prepared for the  
10 Clinton's; is that correct?

11 A That's what it says.

12 Q Was there ever any discussion of using  
13 this report to respond to questions by the press?

14 A After the report was delivered to the  
15 clients I believe a determination was made to use it  
16 in that fashion and also to release the summary, both  
17 of which I believe were done.

18 Q Were they both released at the same time?

19 A I don't know, but I don't think so.

20 Q Please refer to documents Bate stamped JML  
21 140.

22 A I have it.

1 Q Would you please describe that.

2 A It's a letter from me to Governor and Mrs.  
3 Clinton dated April 10th.

4 Q The last sentence of the second full  
5 paragraph of the letter states "Accordingly it is my  
6 recommendation to you that you maintain the complete  
7 report in strictest confidence and do not waive  
8 either the attorney/client or accountant/client  
9 privilege which attaches to the enclosed report."

10 So the complete report was not released to  
11 the press prior to April 10th, 1992; is that correct?

12 A Apparently.

13 Q Do you recall when it as released?

14 A No.

15 Q Why did you advise the Clinton's to keep  
16 this complete report in strictest confidence?

17 A Well I believe that they were well advised  
18 to maintain their attorney/client privilege, the  
19 advice I give routinely to all sorts of clients under  
20 a wide variety of circumstances.

21 Q You noted that your clients were the  
22 Clinton's and not the campaign. Did the Clinton's

1 personally pay your fees or did the campaign pay your  
2 fees?

3 A You asked me earlier if I charged any fees  
4 at all, counselor, and I said I didn't. So nothing  
5 was paid.

6 Q Did the Clinton's pay the fees for Patten,  
7 McCarthy or did the campaign pay the fees for Patten,  
8 McCarthy?

9 A Asked and answered.

10 MR. COLE: It's in my notes.

11 BY MR. JIAMPINETRO:

12 Q Who was involved in preparing the summary  
13 of the report?

14 A Mr. Patten and Mr. Weese.

15 Q Was anyone from the Clinton campaign  
16 involved in the preparation of the summary of the  
17 report?

18 A No, I don't believe so.

19 Q Were any copies of drafts of the report or  
20 the complete report provided to Hillary Rodham  
21 Clinton prior to its public release on March 23rd,  
22 1992?

1 A I believe that they were, and I believe  
2 that there were discussions with Mrs. Clinton.

3 Q Now many discussions were there with Mrs.  
4 Clinton?

5 A I don't know. I don't remember.

6 Q Who had the discussions with Mrs. Clinton?

7 A Mr. Patten principally, perhaps including  
8 Mr. Weese, and I suspect I probably participated in  
9 some of those discussions.

10 Q Did Mrs. Clinton make any suggestions  
11 regarding the substance of the report?

12 A Not that I recall. I believe the  
13 discussions with her were largely to confirm facts  
14 and understandings that Patten and Weese had. There  
15 were questions that they may have had upon review of  
16 the documents.

17 Q So Mrs. Clinton would have reviewed a  
18 version of the complete report prior to March 23rd,  
19 1992; is that correct?

20 A I don't know, but I would assume so. She  
21 would reviewed drafts.

22 Q Were any of the comments made by Mrs.



1 Clinton incorporated into the summary?

2 A I don't know that the summary was ever  
3 reviewed with her.

4 Q We have copies of facsimile transmissions  
5 of various versions of the report that were sent to  
6 Mrs. Clinton during the period of March 19th through  
7 March 23rd, 1992 that were reviewed in Mr. Patten's  
8 deposition. Without going into all of those  
9 facsimile transmissions, does that refresh your  
10 memory as to her participation in the preparation of  
11 the summary?

12 A No. I would have to look at the  
13 documents. It doesn't refresh my memory as you've  
14 phrased it.

15 Q Did either Mrs. Clinton or Governor  
16 Clinton have any role in the preparation of the  
17 complete report?

18 A Well I believe, as I said earlier, there  
19 were discussions with Mrs. Clinton in the nature of  
20 questions, clarifications, comments, or confirmations  
21 I should say, excuse me, about various facts and  
22 various documents, but the substance of the report

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1 and the conclusions reached by the report are those  
2 of Patten, McCarthy and me.

3 Q Prior to its public release on March 23rd  
4 did you have any discussions with Governor Clinton  
5 regarding the report?

6 A Yes. I had interviewed him on perhaps  
7 more than one occasion about what he recollected  
8 about this investment and its development, if you  
9 will, over time.

10 Q How many interviews did you have with  
11 Governor Clinton?

12 A I don't remember. Very few.

13 Q Less than five?

14 A I should think very few.

15 Q Did you interview Mrs. Clinton with regard  
16 to the preparation of the report?

17 A Well I'm sure I talked to her about it.

18 Q How many conversations would you have had  
19 with Mrs. Clinton prior to the public release of the  
20 report on March 23rd with regard to the report?

21 A Oh, I don't remember.

22 Q Did you talk to her about it weekly?

1 A Well the whole process was completed in  
2 less than two to two and a half weeks.

3 Q So would you have discussed it with her  
4 once a week?

5 A I don't believe we had any regular  
6 conversation about it. I think when I needed to talk  
7 with her about a specific matter of fact she was  
8 generally responsive to my questions. She was as  
9 anxious to get to the answers as we were.

10 Q With regard to JML 14 --

11 A I'm sorry, you cut out there.

12 MR. HADDON: Is it 140?

13 MR. JIAMPIETRO: Yes.

14 THE WITNESS: Okay.

15 MR. JIAMPIETRO: Strike that actually.

16 Could you please refer to JML 2587.

17 THE WITNESS: I have it.

18 BY MR. JIAMPIETRO:

19 Q Would you please describe this document.

20 A It's a memo I wrote to Hillary Clinton on  
21 March 20th, 1992.

22 Q I'm going to have some further questions

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30

1 regarding this memorandum later in the deposition,  
2 but I would like to ask you specifically about the  
3 next to last paragraph of the memorandum.

4 A All right.

5 Q This paragraph states "We should also  
6 discuss to what extent and by what means you feel  
7 comfortable releasing Patten's report to the press.  
8 It may be desirable to have Patten and Weese meet  
9 with those members of the press who are interested,  
10 i.e., the New York Times and the Washington Post.  
11 This could be arranged quickly and may be the best  
12 way to put this story behind us. I also believe that  
13 a campaign press person such as Jeff Eller or Max  
14 Parker should be involved."

15 What report are you referring to in that  
16 paragraph?

17 A The Patten report.

18 Q Regarding the investment Whitewater; is  
19 that correct?

20 A Yes.

21 Q This memorandum was written on March 20th,  
22 1992; is that correct?

1 A That's what it says.

2 Q The Patten report was released on March  
3 23rd, 1992; is that correct?

4 A Well it was delivered to the Clinton's  
5 then. I don't know when it was released.

6 Q So presumably at some point prior to the  
7 public release of the report you discussed with Mrs.  
8 Clinton whether the report should be released to the  
9 press and how it should be released to the press; is  
10 that correct?

11 A No.

12 MR. COLE: For the record could we  
13 distinguish between the summary and the report since  
14 I believe one was released at one time and one was  
15 released at a later time, and I'm not sure that a  
16 reader just reading a portion of this transcript at a  
17 later time would know whether you were referring to  
18 the report or the summary if we just say the report.  
19 Why we don't we call them the complete report and the  
20 summary.

21 MR. JIAMPIETRO: The summary report was  
22 released sometime subsequent to March 23rd, 1992, and

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32

1 the complete report was transmitted by Mr. Lyons to  
2 the Clinton's sometime after April 10th, 1992,  
3 according to the correspondence that we have, and in  
4 that correspondence, as indicated previously, his  
5 recommendation was that the complete report remain  
6 confidential. We do know that the summary report was  
7 released to the public sometime soon after March  
8 23rd, 1992, if not on that date.

9 BY MR. JIAMPIETRO:

10 Q Were Mr. Weese and Mr. Patten ever made  
11 available to the press?

12 A I don't know about Mr. Weese, but I  
13 believe on more than one occasion Mr. Patten answered  
14 certain questions that the press had. I don't think  
15 he ever held a press conference if that's what you  
16 mean.

17 Q The memorandum states that you wanted to  
18 discuss with Mrs. Clinton the extent and by what  
19 means she would feel comfortable releasing Patten's  
20 report to the press. Did you ever have any of those  
21 discussions?

22 A I don't recall. I assume we did, but I

1 don't recall.

2 Q Was there ever any discussion that the  
3 summary report would be tailored specifically to  
4 address the press concerns that were raised regarding  
5 Whitewater?

6 A No.

7 Q Regarding JML 140, this is the April 10th,  
8 1992 transmission letter transmitting the complete  
9 report to Governor and Mrs. Bill Clinton.

10 A I have it.

11 Q Would Mrs. Clinton have reviewed or seen a  
12 copy of the final complete report prior to April  
13 10th, 1992?

14 A I don't know. She may very well have.

15 Q Why did you send this cover letter and the  
16 complete report on April 10th, 1992 some 17 days  
17 after the summary report was released to the press?

18 A I don't remember. I really don't  
19 remember.

20 Q How was the summary report described to  
21 the press when it was issued?

22 A I don't know.

---

1 Q Were you involved in discussing the report  
2 with the press?

3 A No, not in any particular way in March of  
4 1992. Questions arose about the report later, and I  
5 had conversations with the press about it, but I  
6 don't recall any specific discussions with the press  
7 in March of 1992 after the report was released.

8 Q Who was responsible for handling the press  
9 with regard to the report?

10 A I don't remember.

11 Q Did you discuss any press issues with  
12 regard to the report with anyone in the Clinton  
13 campaign prior to the report's release?

14 A I don't recall.

15 Q I was referring there to the summary  
16 report.

17 A I don't recall.

18 Q Who prepared the various drafts of the  
19 report?

20 A Mr. Patten and Mr. Weese.

21 Q When did you first receive a draft of the  
22 report.



1 A I don't remember. It would have been  
2 sometime in that week before the report was released  
3 or delivered to the Clinton's, but I don't remember  
4 the exact day.

5 Q Document LP 01108 is a facsimile cover  
6 sheet from Mr. Patten to you dated March 19th, 1992  
7 at 9:31 or 9:37, and it doesn't state a.m., or p.m.  
8 It is a draft of the complete report. Does that  
9 sound about the first date when you would have  
10 received a version of the report from Patten,  
11 McCarthy?

12 A I really don't know. I don't have that  
13 document in front of me. It's not one of the ones you  
14 indicated you wanted us to have available. You now,  
15 if that is, as it sounds like it is, the week, or few  
16 days preceding March 23rd, and if his records show  
17 that he faxed it to me I'm sure I received it.

18 Q How many different drafts of the report or  
19 versions of the report would you have reviewed in the  
20 days leading up to the release of the summary report?

21 A I don't know. I would assume that Mr.  
22 Patten would have sent me any new draft that he or

1 Mr. Weese generated, and if they sent it to me I'm  
2 sure I looked at it.

3 Q Who normally would have received copies of  
4 these drafts for review?

5 A I don't know what you mean by normally.  
6 The people involved in this were me, Mr. Patten, Mr.  
7 Weese and, to the extent we've described earlier,  
8 Mrs. Clinton. I don't know whether or not anybody  
9 else received it.

10 Q Would you please refer to documents Bate  
11 stamped JML 2589 through 2590.

12 A All right.

13 Q Would you please describe the document.

14 A It appears to be a memo to me from Roger  
15 Martin dated March 18th addressing Whitewater  
16 property tax and escrow receipt issues.

17 Q Who is Roger Martin?

18 A Roger Martin was a campaign volunteer who  
19 worked with, among others, Loretta Lynch.

20 Q Was he a lawyer?

21 A I don't remember.

22 Q On March 18th, 1992, the date of this

1 memorandum, were the Clinton's still guarantors on  
2 the \$182,000 that was used to purchase the Whitewater  
3 land?

4 A I don't remember specifically, but I  
5 believe they were. I don't believe their obligation  
6 was released until the note was paid in full.

7 Q Point 3 of the memorandum states "At some  
8 point in time all the principal on the 182 K note was  
9 paid off except the portion of the principal assumed  
10 by Ozark Air Services for the lot purchased in 1985."

11 Did the Clinton's remain guarantors of the  
12 principal that was assumed by Ozark Air Services?

13 A I don't know that that statement is a  
14 correct one, and therefore I don't know that your  
15 question predicated on that sentence is correct  
16 either.

17 Q You wrote that statement; is that correct?

18 A No, I did not. Mr. Martin wrote it.

19 Q I'm sorry, that's correct.

20 On the second page, page Bate stamped JML  
21 2590, are those your notes?

22 A That's my handwriting.

---

1 Q Could you please read those notes for us.

2 A They're bullet points, and there are three  
3 of them.

4 The first one says "Demand for an  
5 accounting - receiver?"

6 The second one is "Confirmation of no  
7 Clinton liability. Ozark assumed loan in 1985."

8 And the third one is "If liability demand  
9 all escrow payments - no deductions - to service."

10 Q What were these notes relating to?

11 A The subject matter of the memorandum sent  
12 me by Mr. Martin.

13 Q Would you please describe the general  
14 substance of what these notes refer to.

15 A I just did. Do you want to know what they  
16 mean?

17 Q Yes.

18 A The first one is my question as to whether  
19 or not we ought to demand an accounting from Mr.  
20 McDougal or anyone else involved in the management of  
21 Whitewater and seek the appointment of a receiver for  
22 its affairs.

1 The second one is my question, as we  
2 discussed a few moments ago, as to whether or not in  
3 fact the Clinton's had any continuing liability on  
4 the original note to Citizens Bank of Flippin.

5 And the third one relates to whether we  
6 should demand, assuming the Clinton's continued to  
7 have some liability, that all the cash flow coming  
8 into Whitewater, which at that point was escrow  
9 payments from land lot sales, should be dedicated to  
10 service debt so that their obligation would be  
11 reduced and ultimately retired.

12 Q Regarding the second bullet point, does  
13 that refresh your memory as to whether or not the  
14 Clinton's remained liable on the note after the Ozark  
15 Air Services' assumption of a part of the principal?

16 A I believe that they did retain liability,  
17 and I certainly had a question at the time apropos of  
18 what you and I discussed a few moments ago in point  
19 three of Mr. Martin's memo to me.

20 MR. COLE: And in fact as I understand  
21 what you just read in your handwriting it indicates  
22 that you were seeking confirmation or additional

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1 information on that point; is that correct, Mr.  
2 Lyons?

3 THE WITNESS: I think that's right.

4 BY MR. JIAMPIETRO:

5 Q The summary report prepared by Patten,  
6 McCarthy concluded that the Clinton's had invested,  
7 loaned or otherwise advanced to Whitewater and the  
8 McDougal's approximately \$68,900 since 1978; is that  
9 correct?

10 A Yes, I believe it was.

11 Q Did you come to learn that that number was  
12 incorrect?

13 A Yes.

14 Q Would you please describe the  
15 circumstances of that.

16 A Yes. Sometime in early to mid-1994, I  
17 think February or March, the President had his  
18 recollection refreshed as to a particular check that  
19 he had written in the amount of some \$20,800 which we  
20 had assumed and believed was Whitewater related. His  
21 recollection later refreshed was that that check did  
22 not relate to Whitewater, but related to the purchase

1 of a lake home he had made with his mother. Once we  
2 were able to confirm that through his recollection we  
3 amended the report by means of a letter which I wrote  
4 to I think Mr. Kendall.

5 Q The letter to Mr. Kendall is Bate stamped  
6 JML 2584 through 2585; is that correct?

7 A Yes.

8 MR. COLE: What is the date of that letter  
9 for the record?

10 MR. JIAMPIETRO: March 22nd, 1994.

11 BY MR. JIAMPIETRO:

12 Q Who specifically informed you that an  
13 error had been made?

14 A I can't answer the question as phrased.

15 Q Why can't you answer the question?

16 MR. COLE: Why don't you ask it in a way  
17 that's neutral on its face, in particular how did he  
18 come to learn that the \$20,000 approximate check was  
19 for some other purpose.

20 MR. HADDON: I couldn't have said it  
21 better myself, Mr. Cole.

22 MR. COLE: I'm sure you could have, but

1 thanks anyway, Mr. Haddon.

2 MR. JIAMPIETRO: Could you please answer  
3 that question.

4 THE WITNESS: Sure. I think the matter  
5 was first brought to my attention by Mr. Kendall who  
6 had had a conversation with the President who had  
7 raised the subject with him, and Mr. Kendall then  
8 called me.

9 BY MR. JIAMPIETRO:

10 Q Were any questions raised regarding this  
11 \$20,000 check while the report was being prepared  
12 during the Presidential campaign?

13 A I'm not sure I know what you mean.

14 Q Did anyone involved in the preparation of  
15 the report raise any questions as to whether or not  
16 this particular check was related to Whitewater?

17 A Well let me answer it this way. The check  
18 on its face and the documents surrounding the check,  
19 as I remember it, did not indicate something as  
20 specific and as clean as a loan number, for example.  
21 We were aware, as I say in the letter of March 22nd,  
22 1994, that there was other Whitewater debt at Madison



1 Bank and Trust, and we're talking about debt other  
2 than lot 13, which also was the subject of borrowing  
3 at Madison Bank and Trust.

4 We knew there was no personal Clinton debt  
5 at Madison Bank and Trust, or believed that to be the  
6 case at the time, and we had talked to both of the  
7 Clinton's about what this check might represent. Now  
8 I don't know that that rises to the level of  
9 questions, but the check and the document which was  
10 the check given its four corners did not by itself  
11 tell us to what it referred. We therefore needed to  
12 do some investigation, which we did, as I've just  
13 described.

14 Q What evidence did you have that Whitewater  
15 Development Corporation had incurred debt from  
16 Madison Bank and Trust?

17 A Well the work papers, as I recall it, had  
18 not only copies of notes, that is promissory notes  
19 and related documents, but also there were internal  
20 corporate records that reflected money owed to  
21 Madison Bank and Trust by various parties I might  
22 add.

1 MR. COLE: And just for readers of this  
2 record who might not be as familiar as the people  
3 participating in this deposition with the facts here  
4 Madison Bank and Trust is an entirely separate  
5 institution from Madison Guaranty Savings and Loan  
6 that Mr. McDougal operated at a certain point in  
7 time. All of us know that, but I just want to note  
8 it for the record in case someone later is reading  
9 this who doesn't know that.

10 THE WITNESS: That's correct.

11 MR. JIAMPIETRO: I asked Mr. Haddon to  
12 pull a number of documents that were produced to us  
13 from Les Patten. At this time I would like you to  
14 refer to documents Bate stamped LP 00318 --

15 THE WITNESS: I have that.

16 MR. JIAMPIETRO: LP 00100.

17 THE WITNESS: I have that.

18 MR. JIAMPIETRO: LP 00519.

19 THE WITNESS: I have that.

20 MR. JIAMPIETRO: And finally JML 023,  
21 which was produced to us by Mr. Lyons.

22 THE WITNESS: And I have that.

1 MR. JIAMPIETRO: Would you take a moment  
2 to review these documents.

3 THE WITNESS: I have.

4 BY MR. JIAMPIETRO:

5 Q Would you please describe them to us.

6 A I don't know what LP 0100, 318 and 519  
7 are. They appear to be papers that were either  
8 generated by or delivered to the Patten, McCarthy  
9 firm in the course of their work. Whose handwriting  
10 they are, for what purpose they were prepared or how  
11 they were used by Patten, McCarthy & Associates I do  
12 not know.

13 Q LP 00100 is a document that was prepared  
14 by Allison Burton who worked for Yoly Redden. The  
15 document in the upper-right-hand corner states  
16 "Prepared by AB," and the date is I believe August  
17 22nd, 1990.

18 A Well that's not clear on my copy, but I'm  
19 certainly willing to accept your representation.

20 Q The title of the worksheet is "Whitewater  
21 Development Company Out-of-Pocket Costs of Bill and  
22 Hillary Clinton." A number of items are listed,

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1 including check numbers and payees and dates. The  
2 subtotal of out-of-pocket expenditures is listed as  
3 \$52,372, and there may be some small number after  
4 that, the next line lists proceeds from sale of Logan  
5 property at \$23,869, and once again it's illegible as  
6 to whether or not there is an additional amount,  
7 giving a net out-of-pocket of \$28,512 contributed to  
8 Whitewater by Bill and Hillary Clinton for the period  
9 of 1978 through 1990.

10 Document Bate stamped LP 00318 is a typed  
11 worksheet showing Clinton funds paid to Whitewater  
12 with three columns, one listing dates, the second  
13 column listing payable to, and the third column  
14 listing amounts. It lists a number of items from  
15 1978 through 1990 totalling \$45,565.29.

16 LP 00519 is a handwritten page of notes  
17 listing what appear to be the same contributions that  
18 are listed on the other two pages.

19 Patten, McCarthy would have had these  
20 worksheets during its preparation of the report?

21 A I don't know. You would have to ask them.

22 Q The documents were produced to us by the

1 firm Patten, McCarthy and each of them shows an  
2 amount by the Clinton's much lower than \$68,000. Did  
3 you ever discuss any of these documents with the  
4 Patten, McCarthy?

5 A I don't think I've ever seen them before.

6 Q With regard to JML 023 would you please  
7 describe that document for us.

8 A It appears to be a memorandum written by  
9 Loretta Lynch and Jim Blair dated March 10th, 1992.

10 Q The memorandum is to something referred to  
11 as The Defense Team regarding suggested public  
12 position regarding corporate records.

13 A That's what it says.

14 Q What does The Defense Team mean?

15 A I don't know.

16 Q Were you a member of The Defense Team?

17 A Well Loretta obviously thought I was  
18 because she sent it to me.

19 Q When would you have reviewed this  
20 document?

21 A When I received it.

22 Q Did you receive it on March 10th, 1992?

1 A There is a fax indication in the upper-  
2 right-hand corner that it was received on March 10th,  
3 or sent on March 10th, 1992 at 1526, 3:26 in the  
4 afternoon.

5 Q This would have been about two weeks prior  
6 to the release of the summary report; is that  
7 correct?

8 A It would have been while the work of  
9 Patten, McCarthy was underway.

10 Q The memorandum states "Jim and I have  
11 reviewed the results of our preliminary review of  
12 monies into and out of Whitewater Development  
13 Company. Those results are as follows: Clinton's  
14 contributions into WWDC, \$45,565; McDougal's  
15 contributions into WWDC, \$106,160.39; WWDC loan  
16 payments to McDougal and his related entities,  
17 \$106,188.13. Based on these totals, but mindful of  
18 the incomplete and partial nature of this  
19 information, we suggest the following public  
20 response," and then it gives a public response, or a  
21 suggested public response.

22 What was the source of these findings?

1       A    I don't have any idea. You would have to  
2 ask Ms. Lynch. Remember that the Patten, McCarthy  
3 firm had just come on the scene and just begun to do  
4 its work at this point, and as I read the memorandum  
5 Ms. Lunch apparently concludes that the proper way to  
6 resolve the matter is by a formal accounting. I'm  
7 looking at the last sentence, the last full sentence  
8 on this document, which is what we were attempting to  
9 do with Patten, McCarthy & Associates

10       MR. COLE: And you testified previously,  
11 Mr. Lyons, that you received information from Ms.  
12 Lynch that she had collected prior to the time that  
13 Patten, McCarthy undertook their analysis.

14       THE WITNESS: That's true.

15       MR. COLE: So this memorandum seems to be  
16 consistent with your recollection.

17       THE WITNESS: Well there were a number of  
18 people who were trying to gather information here so  
19 that we could put it in the hands of someone who  
20 could get to the bottom of it and answer the  
21 questions we wanted answered, and that entity was  
22 Patten, McCarthy & Associates.

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1       BY MR. JIAMPIETRO:

2       Q    Who was it that decided to include the  
3 \$20,000 check to Madison as part of the Clinton's  
4 contributions to Whitewater?

5       A    Mr. Patten and Mr. Weese.

6       Q    Were you involved in that decision?

7       A    I'm sure they discussed it with me. Given  
8 the nature of the check and the fact that, as I said  
9 earlier, the four corners of the instrument didn't  
10 resolve the question we needed extrinsic information  
11 to answer the question. I don't have any doubt that  
12 they probably talked to me about it.

13       Q    So there was some doubt in your mind as to  
14 whether the \$20,000 check was related to Whitewater  
15 Development Corporation; is that correct?

16       A    No, that's not correct. Let me say it  
17 again a third time. The four corners of the  
18 instrument did not answer all the questions we needed  
19 answered with regard to that check. So we went to  
20 other sources and reached the conclusion in March of  
21 1992, which we did, a conclusion when we received  
22 other information two years later we immediately



1 corrected I might say without having any access to  
2 the internal records of Madison Bank and Trust, as  
3 the Pillsbury, Madison & Sutro Firm had.

4 MR. COLE: Thank you, Mr. Lyons, you saved  
5 me a question for later on today. Very efficient.

6 THE WITNESS: You're welcome.

7 BY MR. JIAMPIETRO:

8 Q Would you please refer to documents Bate  
9 stamped JML 003 through JML 008.

10 A Yes, I have it.

11 Q Would you please describe this document.

12 A It appears to be a memo written by Loretta  
13 Lynch on March the 3rd, 1992 titled "Tax Issues  
14 Outstanding Re Whitewater Development Corporation."

15 Q A portion of the memorandum has been  
16 redacted. Can you explain why that was redacted?

17 A No, I can't.

18 Q Do you have an unredacted copy?

19 A Do I?

20 Q Yes.

21 A No, apparently I don't.

22 MR. JIAMPIETRO: Off the record.

1 (Discussion off the record.)

2 MR. JIAMPIETRO: Back on the record.

3 BY MR. JIAMPIETRO:

4 Q Do you have the document JML 003 through 8  
5 in front of you?

6 A I do.

7 Q Could you please review this document  
8 briefly and describe it for us.

9 A Yes. It's a memo apparently which I  
10 received from Loretta Lynch on March the 3rd  
11 regarding tax issues re Whitewater Development Corp.

12 Q Would you describe the substance of the  
13 memorandum to us.

14 A Well it speaks for itself. I didn't write  
15 it. I simply received it and read it.

16 Q Page 2 of the document Bate stamped JML  
17 004 states "Conclusions re tax treatment of the  
18 \$182,000 loan financing 90 percent of the purchase  
19 price."

20 It goes on to state "A major problem  
21 arises from the differential between the sales price  
22 of the land to the individuals in 1978 and the price

1 at which the individuals deed the land to the  
2 Corporation in 1979. This differential ultimately  
3 results in probable non-recognition of capital gains  
4 attributable to the clients of approximately \$23,500.

5 "In addition, because the Corporation  
6 carried the value of the land as a loan made by the  
7 shareholders, the IRS would have charged imputed  
8 interest of at least seven percent per year on the  
9 outstanding shareholder loan debt."

10 There is an parenthetical which I'll omit.  
11 It goes on to state ". . . with a rough estimate of  
12 unpaid imputed interest which our clients should  
13 have, but failed to report as income totally more  
14 than \$44,000 from 1979 to 1986."

15 Did you discuss this issue with anyone in  
16 the Clinton campaign?

17 A I think I may have discussed it at one  
18 point with Mr. Patten.

19 Q Could you please tell us the substance of  
20 those discussions?

21 A He thought she was wrong.

22 Q Could you tell us why?

1 A Yes. In general, remembering I'm not tax  
2 lawyer and neither is Ms. Lynch, the basis on which  
3 the real estate is transferred from the individuals  
4 to the Corporation also needs to take into account  
5 associated capitalized expenditures, such as  
6 interest, but when you do that you appropriately have  
7 an increase in the basis of the transferor to the  
8 transferee, as I understand it, and there is no  
9 recognition of any gain or income of any kind.

10 Q Further down on page 3 of the memorandum,  
11 document Bate stamped JML 995, the document states  
12 "Thus, the Corporation was structured as follows:

13 "1. Take out the debt as individual debt  
14 and buy the land;

15 "2. Deed the land over to the Corp for  
16 increased value (improvements, planning,  
17 appreciation?, et cetera);

18 "3. Individuals pay the interest while the  
19 Corporation loses money;

20 "4. Individuals take advantage of the  
21 interest deductions on their taxes."

22 Was there ever any discussion during the

1 Clinton Presidential Campaign as to whether or not  
2 Whitewater Development Corporation was a tax shelter  
3 for the Clinton's or the McDougal's?

4 A Well it was a tax shelter in the sense  
5 that the investors all lost money.

6 Q Was there ever any discussion that the  
7 loss incurred in Whitewater Development Corporation  
8 would be used to offset income from other sources  
9 that was being received by the parties?

10 A I'm not sure I understand your question.

11 MR. COLE: I don't understand the question  
12 either. Discussions by whom when?

13 MR. JIAMPIETRO: I'm asking Mr. Lyons  
14 whether or not he had any discussions during the  
15 course of his work for the Clinton Presidential  
16 Campaign of whether or not Whitewater was intended to  
17 be used by the parties to offset income received by  
18 the parties from other sources.

19 THE WITNESS: I don't recall any  
20 discussion during the campaign to the effect that  
21 Whitewater was to be a tax shelter to shelter income  
22 from other sources. To the extent that any of these

1 investors lost money, then according to appropriate  
2 IRS rules I think they could probably recognize some  
3 loss if they chose to.

4 BY MR. JIAMPIETRO:

5 Q The memo refers to a Thursday meeting in  
6 New York.

7 A I'm sorry, where are you?

8 Q JML 003.

9 A All right, I have it.

10 Q Do you recall this meeting?

11 A I wasn't there.

12 Q Did you discuss the meeting with anyone?

13 A I wasn't there.

14 Q I'm not saying at the meeting. Did you  
15 discuss with anyone what occurred at the meeting or  
16 the planning for the meeting?

17 A I'm not even sure the meeting took place.  
18 I don't know what she's referring to.

19 Q Who was responsible for reviewing the  
20 various tax issues relating to Whitewater for the  
21 Clinton Presidential Campaign?

22 A Well I assume their personal accountant,

1 Ms. Redden, was responsible for reviewing and  
2 preparing their personal taxes.

3 Q Obviously we have a memorandum written  
4 here by Loretta Lynch which addresses tax issues  
5 outstanding re Whitewater Development Corp. Was she  
6 the person responsible for analyzing these tax  
7 issues?

8 A I don't think so. She wasn't a tax  
9 lawyer.

10 Q That's exactly my question, sir. Was  
11 there a tax lawyer that was employed by the Clinton  
12 Presidential Campaign to review these issues?

13 A Well if that was your question, counsel,  
14 you should have asked it at the outset of this line  
15 of inquiry, which you did not. So far as I know,  
16 there was no tax lawyer engaged by the campaign to do  
17 specifically what you've indicated.

18 Q Given all the difficult issues that have  
19 been raised regarding the tax issues involving  
20 Whitewater --

21 MR. COLE: I'm sorry, I just want to be  
22 clear, raised when by whom?

1 MR. JIAMPIETRO: Raised during the  
2 Presidential Campaign --

3 MR. COLE: At the time.

4 MR. JIAMPIETRO: -- regarding Whitewater  
5 at the time.

6 BY MR. JIAMPIETRO:

7 Q Were you surprised that there was no tax  
8 lawyer employed to review these issues?

9 A First of all, I don't know what issues  
10 you're referring to.

11 Q The issues that are addressed in this  
12 memorandum of March 3rd, 1992 and the issues  
13 addressed in the Patten, McCarthy report of March  
14 23rd, 1992.

15 A The issues addressed in the Patten,  
16 McCarthy report speak for themselves.

17 Q Mr. Patten has told us that he is not an  
18 expert in income tax issues as well in a prior  
19 deposition.

20 A He's a certified public accountant who, as  
21 I recall, in his report noted that there might have  
22 been some inappropriate deductions for interest taken



1 during certain years, and I regarded his opinion then  
2 and now as reliable in that regard.

3 Q Let me refer you to the sixth page of the  
4 memorandum and the last page Bate stamped JML 008.

5 A All right.

6 Q Under the subheading which states "Tax  
7 Issues Not Addressed" there are two items listed.  
8 The first item states "Treatment of interest income  
9 from each mortgage payment." Did you ever discuss  
10 this issue while you were preparing your report?

11 A I don't have any specific recollection of  
12 discussing that.

13 Q The second item listed states "Does this  
14 run into problems with capital loss rules/treatment?  
15 Can this be characterized as tax shelter?" Do you  
16 recall addressing those issues while you were  
17 involved in the Clinton Presidential Campaign?

18 A The same answer.

19 Q In the paragraph immediately before that  
20 subheading there is a portion of the memorandum which  
21 reads "Nexus with Federal disclosure issues. If  
22 there is an outstanding liability which our clients

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1 have personally guaranteed, do we need to list it as  
2 a liability? Or, once again, do we need a corporate  
3 accountant to truly determine if this is a net  
4 liability or a net asset? Does the Corporation have  
5 sufficient assets to pay off this note?"

6 Do you recall discussing any of these  
7 issues, or addressing any of these issues while you  
8 were involved with the Clinton Presidential Campaign?

9 A I think after the Patten, McCarthy report  
10 and work was completed and we then had some  
11 understanding of just what Whitewater was and to what  
12 extent it represented either an asset, a liability or  
13 both to the Clinton's, an amendment was made to the  
14 Presidential Candidate Disclosure Form, but I don't  
15 remember exactly when that was done.

16 Q Would you please refer to documents Bate  
17 stamped JML 2587 through 2588.

18 A All right.

19 Q This is the memorandum written by you to  
20 Hillary Clinton on March 20th, 1992; is that correct?

21 A So it appears.

22 Q The second full paragraph of the

1 memorandum states "Les Patten is completing a  
2 memorandum this weekend which will identify  
3 discrepancies between Bill's State and Federal  
4 disclosure forms. As you know, it is my  
5 recommendation that we amend both State and Federal  
6 forms in a complete and comprehensive fashion as soon  
7 as possible. Jim Hamilton has agreed to advise us in  
8 this area."

9 The memorandum described in that paragraph  
10 I believe can be found at JML 3188 through JML 3189.  
11 It is a letter from Mr. Patten to Mr. Lyons dated  
12 March 25th, 1992 which lists five observations  
13 regarding financial disclosure forms previously filed  
14 by Governor Bill Clinton. Take a moment to review  
15 that document as well.

16 A I have.

17 Q Were these disclosure issues ever  
18 discussed with the Clinton's?

19 A You mean other than the memorandum that I  
20 sent her on March 20th?

21 Q That is correct.

22 A I would assume that I did have a further

1 discussion with her, but I don't have a specific  
2 recollection. I know I did discuss it with Jim  
3 Hamilton.

4 Q Could you please describe that discussion  
5 for us.

6 A Yes. Jim Hamilton was another lawyer  
7 volunteering his time to the campaign. He is an  
8 expert in ethics and disclosure law with respect to  
9 Federal officeholders. So we gave this information  
10 to him for his review and decision as to whether  
11 these amendments should be made, and I believe they  
12 were.

13 Q Do you have any specific recollection as  
14 to whether or not the revisions were made to both the  
15 State and Federal disclosure forms?

16 A Well I'm having trouble with the specific  
17 part of your question.

18 Q I think you can refresh your memory  
19 perhaps by looking at the March 25th Patten  
20 memorandum to you which lists in detail each category  
21 of disclosure form and each date of the disclosure  
22 forms and the omissions on each category and specific

1 disclosure form.

2 A Yes, but I didn't understand that to be  
3 your question. Maybe I misunderstood. I thought  
4 your question was whether I had any specific  
5 recollection that in fact amendments were made to the  
6 State disclosure forms.

7 Q Yes, the State disclosure forms listed on  
8 the Patten letter to you.

9 A I don't remember. I know that a  
10 disclosure was made with respect to the Federal form,  
11 or supplement I guess I should say, or amendment.

12 Q Do you know when that amendment was made?

13 A No, not off the top of my head I don't.  
14 If you have a document reference I would be happy to  
15 look at it.

16 Q We'll return to that momentarily.

17 The March 20th memorandum from you to Mrs.  
18 Clinton also states "Loretta Lynch will deliver to  
19 you tomorrow a chronology of key events which  
20 occurred with Whitewater during the period of 1978  
21 through 1991."

22 Would you please refer to documents Bate

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1 stamped JML 068 through JML 075.

2 A Okay.

3 Q Would you please describe that document.

4 A It's a memo to me and others from Loretta  
5 Lynch and Roger Martin entitled "Whitewater  
6 Development Corporation Chronology."

7 Q This is dated February 29th, 1992.

8 A That's correct.

9 Q Is this the chronology referred to in your  
10 memorandum to Mrs. Clinton?

11 A I don't know. It may be, but I sort of  
12 doubt it. My memorandum to Mrs. Clinton is almost a  
13 month later, and by that time I would expect that  
14 Loretta would have had better information in terms of  
15 times, dates and transactions, but I don't know for  
16 certain. You would have to ask her.

17 Q Did you receive any revised versions of  
18 this chronology after February 29th, 1992?

19 A I don't know. I may have. If I did, it's  
20 in the documents I produced.

21 Q We could find it. So perhaps you didn't.  
22 I would like to ask you some specific

1 questions with regard to this chronology.

2 A Well I didn't write it. So what I may  
3 know about it is fairly limited, but go ahead.

4 Q On page 2 of the document Bate stamped JML  
5 0069 --

6 A Yes.

7 Q -- the very last item listed on the page  
8 dated December 9th, '81, there is a reference above  
9 it which states "Key Doc." Do you know why this  
10 would have been a key document?

11 A No.

12 Q Would you please turn to page 4 of the  
13 chronology, JML 071.

14 A All right.

15 Q The item listed at the top of this page is  
16 also noted as a "Key Doc." It lists "status report  
17 from Jim McDougal to BC&HRC stating that WWDC has  
18 experienced losses totalling approximately \$90,000."  
19 This item is dated November 14th, '86. The item goes  
20 on to quote from the letter from Mr. McDougal to  
21 Governor and Mrs. Clinton "I wanted to get you out of  
22 the company because of the high potential of

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1 embarrassment to you. Second, I had hoped to take  
2 advantage of the 90 K loss for tax purposes since  
3 Susan and I have in large measure contributed to the  
4 company's funds necessary to cover these losses."

5 Do you recall this document?

6 A Not specifically, no.

7 Q Did you ever discuss this document with  
8 the Clinton's?

9 A I don't remember if I did or didn't.

10 Q At the bottom of page 4 there is a heading  
11 which states "The Story of Tract 13." Do you know  
12 why there was so much interest in tract 13 during the  
13 Presidential campaign?

14 MR. COLE: Interest by whom?

15 MR. JIAMPIETRO: Many documents we have  
16 refer to tract 13, there are many analyses of tract  
17 13, and a lot of numerous documents were collected  
18 involving tract 13. I think there is significant  
19 evidence of the interest by members of the campaign  
20 in understanding the developments and circumstances  
21 surrounding tract 13, and I'm trying to understand  
22 why there was that interest.



1 MR. COLE: Well thank you, that's helpful  
2 because I was just trying to distinguish between  
3 interest on the part of people inside the campaign  
4 and interest on the part of reporters or others  
5 outside of the campaign just for a clear record.

6 MR. JIAMPIETRO: Inside the campaign.

7 MR. HADDON: So the question is whether  
8 Mr. Lyons knows if there was interest in this issue?

9 MR. JIAMPIETRO: Why there was interest in  
10 this issue inside the campaign.

11 THE WITNESS: Well I can only speak for  
12 myself, which I'm happy to do. I was interested in  
13 it because this is the parcel and the only parcel,  
14 Whitewater Development Corporation, in which the  
15 Clinton's, in this case Mrs. Clinton ever had any  
16 specific ownership interest.

17 BY MR. JIAMPIETRO:

18 Q The next four pages of the February 29th,  
19 1992 chronology go on to list items involving tract  
20 13.

21 On page 5 of the chronology at the bottom  
22 of the page an item dated February '82 states "Marlin

1 Jackson, Chairman of the Board and controlling owner  
2 of the Security Bank of Paragould, appointed State  
3 Bank Commissioner by BC." BC refers to Bill Clinton;  
4 is that correct?

5 A I would assume so.

6 Q Do you know why this is relevant to tract  
7 13?

8 A I don't know that it is.

9 Q It's listed in the chronology of events  
10 under the heading entitled "Story of Tract 13."

11 A Well you'll have to ask the author, not  
12 me.

13 Q Did you ever discuss its relevance with  
14 anyone in the campaign?

15 A Not that I recall.

16 Q On page 4, the first item dated 12/16/80  
17 under the heading "The Story of Tract 13" states "HR  
18 signs \$30,000 mortgage with Bank of Kingston for  
19 tract 13 secured by tract 13 Whitewater estates," and  
20 it goes on to list some of the details of the  
21 mortgage.

22 Do you know who owed the Bank of Kingston

1 in December of 1980?

2 A No.

3 Q Did Jim McDougal own the Bank of Kingston  
4 in December of 1980?

5 A I don't recall. He may have had an  
6 ownership interest in it at the time.

7 Q On page 7 of the chronology, JML 074, the  
8 first item on the page dated November 1st, 1985  
9 states "Letter from Marlin Jackson, Arkansas Bank  
10 Commissioner, State Bank Department to Charles  
11 Campbell of Security Bank of Paragould enclosed BC's  
12 extension agreement of 10/11/85. Also said JMCD  
13 would be sending check for interest and some amount  
14 of principal."

15 The last sentence of the items reads "Note  
16 last line: 'I trust this meets with your approval and  
17 that it will soon remove the note from the past due  
18 list'."

19 Did you ever discuss Mr. Jackson's  
20 involvement in lot 13 with anyone in the Clinton  
21 Presidential Campaign or anyone associated with  
22 investigating the Whitewater issues during the

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1 Clinton Presidential Campaign?

2 A Well I don't know that Mr. Jackson ever  
3 had any involvement in lot 13, but I don't recall any  
4 specific discussion with anyone about his  
5 involvement, if any, in lot 13.

6 MR. JIAMPIETRO: Well clearly he was  
7 writing a letter to a loan officer or a officer of  
8 Security Bank of Paragould regarding the loan that  
9 was used to finance the purchase of lot 13.

10 MR. COLE: Could I suggest that we just  
11 ask Mr. Lyons his recollection and not take time  
12 speculating on it.

13 MR. JIAMPIETRO: I certainly would  
14 appreciate if Mr. Lyons would read the documents and  
15 describe the documents in summary, but he has so far  
16 refused when I've asked for descriptions of the  
17 documents to give me detailed descriptions of the  
18 documents. So for a complete record I've been  
19 reading out of the documents.

20 MR. COLE: That wasn't my point though.  
21 Your last editorial comment I think just went to Mr.  
22 Lyons' prior response that he had no knowledge. If

1 he has no knowledge I think we should just move on.

2 MR. HADDON: Well I submit that those  
3 kinds of characterizations are pretty unfair and  
4 inaccurate. This is not a document he prepared.  
5 You're asking him to read it and to interpret it, and  
6 I think that's impossible for somebody who is not the  
7 author. You can and have asked him whether or not he  
8 discussed this matters with anybody, and he says he  
9 doesn't recall and doesn't think he did. It seems to  
10 me that ought to be the end of the inquiry. You're  
11 asking him to interpret somebody else's document.

12 MR. JIAMPIETRO: Let's move on to  
13 documents Bate stamped JML 2748 through 2751.

14 THE WITNESS: All right, I have it.

15 BY MR. JIAMPIETRO:

16 Q Would you please describe this document.

17 A It appears to be the index for want of a  
18 better word regarding tract 13 and refers to various  
19 tabs and appendices that apparently relate to lot 13.

20 Q It's a four-page index which lists 55 tab  
21 numbers and Appendices A through F; is that correct?

22 A Yes, that's right.

1 Q Who provided you with this index?

2 A This came in documents that were furnished  
3 me by Webster Hubbell in 1993.

4 Q Subsequent to the preparation of the  
5 Patten, McCarthy report?

6 A That's correct.

7 Q Did you ever discuss these documents with  
8 Mr. Hubbell?

9 A I'm sure I did in at least a general sense  
10 when I received and had an opportunity to look at  
11 them.

12 Q Do you know who prepared this index?

13 A I do not.

14 Q Did you ever review a memorandum or report  
15 prepared based on these documents listed in the  
16 index?

17 A I don't know. I may have, but it would  
18 have been in I believe 1993.

19 Q Is this the only index you received from  
20 Mr. Hubbell?

21 A Oh, I don't know. I would have to go  
22 through all these documents to answer that, but this

1 is the only one I have any recollection of seeing.

2 Q If we gave you a moment could you find the  
3 report relating to lot 13 in your documents for us?

4 A Well you're referring to this as a report,  
5 and I'm not sure it's anything more than what it  
6 indicates, which is an index of relevant documents  
7 that relate to Whitewater, virtually all of which I  
8 am sure we either had an opportunity to see or know  
9 about in the preparation of our report back in March  
10 of '92.

11 MR. HADDON: Now what report are you  
12 asking him to locate?

13 MR. JIAMPIETRO: I believe that Mr. Lyons  
14 stated that he may have reviewed in 1993 a report or  
15 memorandum that had been prepared based on these  
16 documents. In reviewing his production to us I did  
17 not find a specific report or memorandum based on  
18 these documents, and I was just wondering if he could  
19 recollect the circumstances surrounding that report  
20 or where it may have been produced or give us some  
21 idea on those questions.

22 THE WITNESS: Well let me see if I can't

1 clarify this for you. I don't want there to be any  
2 misunderstanding. I may have seen a document which  
3 included these tabs and appendices, if that's what  
4 your question is. I don't regard that as a report.  
5 It appears to me that these tabs and appendices,  
6 particularly the tabs simply are somebody's effort to  
7 put in some order the documents, some of the  
8 documents that related to Whitewater, things like  
9 cancelled checks, loan applications, et cetera.

10 Again the document is part of a number of  
11 documents which were sent to me by Mr. Hubbell in  
12 1993 which I looked at, and I simply do not remember  
13 if I saw the tabs and appendices that are referred to  
14 in JML 2748 through JML 2751.

15 BY MR. JIAMPIETRO:

16 Q Just to be perfectly clear on this, do you  
17 recall ever seeing a narrative description that was  
18 produced in association with these tabs and this  
19 index?

20 A No, I don't believe I did if in fact such  
21 a thing exists.

22 Q Was this document and the documents listed



1 in the index the only documents that you received  
2 from Mr. Hubbell in 1993?

3 A No

4 Q What other documents did you receive from  
5 Mr. Hubbell along with this document?

6 MR. HADDON: Are you confining that to the  
7 scope of Senate Resolution 120?

8 MR. COLE: I'll answer that. Yes.

9 MR. HADDON: If that limitation exists  
10 with the question, then he can answer.

11 THE WITNESS: The documents Bates stamped  
12 JML 2596 through and including JML 3218 are copies of  
13 documents which I received from Mr. Hubbell in 1993.

14 BY MR. JIAMPIETRO:

15 Q When exactly did you receive these  
16 documents from Mr. Hubbell in 1993?

17 A I don't know exactly as I sit here, but I  
18 believe I received them sometime in October or  
19 November of 1993.

20 Q Were the documents sent to you or where  
21 they delivered in person?

22 A No, I think they were sent to me.

1 Q If Mr. Hubbell recalls giving them to you  
2 in person, do you dispute that?

3 MR. HADDON: I object to the form of the  
4 question. I know of no such recollection by Mr.  
5 Hubbell. If you can provide a specific context in  
6 terms of the testimony, then I'll withdraw the  
7 objection.

8 Q A message slip produced to us both by Mr.  
9 Hubbell and the Department of Justice dated October  
10 25th at 12, and it doesn't state p.m. or a.m., lists  
11 telephone number (303) 623-9000. Is that your  
12 telephone number?

13 A That's my telephone number.

14 Q The message states "Will be in town  
15 tomorrow. Would like to see you either on Wednesday  
16 or Thursday to discuss/review documents on WDC  
17 Company." Does this refresh your memory?

18 MR. COLE: Let's just note the Bates  
19 number of that for the record.

20 MR. JIAMPIETRO: It's Bates number 010299.

21 THE WITNESS: Well I don't doubt that I  
22 called him, and I don't doubt that as a result of

1 that the documents I've described to you were sent by  
2 him to me. Your question I thought was whether he  
3 might have given me some of these documents in  
4 person. Wasn't it?

5 MR. COLE: I'm confused, and maybe I'm  
6 just not listening carefully enough here, and pardon  
7 me if that is the case, Mr. Lyons.

8 Is it your testimony that you don't have a  
9 recollection one way or another of exactly how you  
10 obtained these documents, or is it your testimony  
11 that --

12 MR. JIAMPIETRO: Well, Lance, in a moment  
13 you can clarify that. Let me just finish with the  
14 line of questioning here and then you can clarify all  
15 that you want.

16 Mr. Hubbell was deposed on June 4th, 1996  
17 by the Special Committee.

18 MR. COLE: What I'm talking about here is  
19 it's not fair to play games with the witness as to  
20 whether, you know, he remembers something the same  
21 way another witness remembers it. Why don't we ask  
22 him what he remembers, and then if you want to try to

1 refresh his recollection with another witness'  
2 testimony that's appropriate. But to quiz him or say  
3 do you take issue with what another witness has  
4 testified is just not an appropriate way to conduct a  
5 deposition, in my opinion.

6 MR. JIAMPIETRO: That's your opinion and  
7 that's fine, and I just want to finish this line of  
8 questioning, and when we do you can follow up as you  
9 would like.

10 MR. HADDON: I joint in Mr. Cole's  
11 observation and objection.

12 MR. JIAMPIETRO: It will be noted for the  
13 record.

14 BY MR. JIAMPIETRO:

15 Q In that deposition he stated "Jim called  
16 me and asked me to -- he knew that I -- he wanted to  
17 know where the Betsy files, as he called them, were,  
18 and I told him I still had them, and he asked that I  
19 bring those that related to Whitewater to him so that  
20 he could help prepare responses to questions that  
21 were coming in, that he would be working with Bruce  
22 Lindsey on that issue, and ultimately I did bring

1 some of the documents to Jim, and we had lunch that  
2 day and talked about them, and think at some later  
3 time once I had David Kendall I called Jim and said  
4 would you send me back those documents I gave you. I  
5 think now, I think I was correct earlier. I think  
6 Jim sent back to me, and then I gave them to David.  
7 Does that make sense?"

8 That's page No. 71 of the condensed  
9 transcript and concordance.

10 MR. COLE: Of Webster Hubbell's testimony  
11 on what date?

12 MR. JIAMPIETRO: June 4th, 1996.

13 MR. COLE: In deposition?

14 MR. JIAMPIETRO: In deposition.

15 MR. COLE: Thank you.

16 BY MR. JIAMPIETRO:

17 Q Does that refresh your memory?

18 A I recall having lunch with him, and I  
19 recall that we discussed documents. He may or may  
20 not have given me documents at that time, but I am  
21 certain that he also sent documents to me.

22 Q Do you recall sending those documents back

1 to Mr. Hubbell?

2 A I recall sending the documents to David  
3 Kendall. I don't know and would have to check and  
4 see if I also sent copies of them to Web, but I know  
5 I sent copies, or I think the original documents to  
6 Kendall and kept a set for myself, which are the  
7 documents that I previously indicated for you and for  
8 the record.

9 Q Why would you have sent documents back to  
10 Mr. Hubbell?

11 A I said I'm not sure that I did. I would  
12 have to check and see if I did. I may not have. I  
13 think, well I do know that I sent the documents to  
14 David Kendall and kept a set for myself.

15 Q Will you please check your records for us  
16 on that matter?

17 A Sure.

18 MR. COLE: Which matter, whether he kept  
19 them for himself or whether he sent them to Hubbell?

20 THE WITNESS: I understood him to ask me  
21 whether I sent them to Hubbell.

22 MR. JIAMPIETRO: That's right.

1 THE WITNESS: Am I correct in that?

2 MR. JIAMPIETRO: That is correct.

3 I would like to turn your attention to

4 documents Bate stamped JML 2864 through 2883. This

5 is one of the documents that was listed in the

6 appendices to the tract 13 index.

7 THE WITNESS: I'm sorry, let me have the  
8 reference again.

9 MR. JIAMPIETRO: Certainly. It's JML  
10 2864.

11 THE WITNESS: Through what?

12 MR. JIAMPIETRO: Through 2883.

13 THE WITNESS: Okay.

14 BY MR. JIAMPIETRO:

15 Q This is one of the appendices listed in  
16 the tract 13 index.

17 A I'll accept that.

18 Q It's listed on the last page of the index  
19 Bate stamped JML 2751, Appendix C, Regulation O.  
20 It's a copy of Regulation O, Loans to Executive  
21 Officers, Directors and Principal Shareholders of  
22 Member Banks, 12 CFR 215 as amended effective

1 December 31st, 1983.

2 A Yes, so it says.

3 Q Do you recall whether or not the lot 13  
4 transaction was structured in order to avoid  
5 violating Regulation O?

6 A I don't know.

7 Q Did you discuss that with anyone in the  
8 Clinton Presidential Campaign?

9 A Not that I recall.

10 Q Do you know why Regulation O would have  
11 been relevant to an analysis of lot 13?

12 A You're assuming that it is. I can't make  
13 that assumption.

14 Q It's included in the index of tract 13.

15 A Yes, but that's not an index I prepared.  
16 I mean I don't know anything about why someone would  
17 have included or not included that. You'll have to  
18 ask whoever wrote that index.

19 Q Did you review lot 13 and the  
20 circumstances surrounding lot 13 in preparing the  
21 report that was issued on March 23rd or the complete  
22 report which was sent to the Clinton's on April 10th?



1 A Yes. Lot 13 is a part of what we looked  
2 at.

3 Q Could you please describe your  
4 understanding of lot 13 briefly.

5 A Well I'm not sure I know what you mean, my  
6 understanding of it. If you have a specific question  
7 I'll be happy to answer it if I can.

8 MR. COLE: That's a very long and  
9 complicated transaction or series of transactions. I  
10 think we need to sharpen this one up a bit, with all  
11 respect to you Mr. Jiampietro.

12 BY MR. JIAMPINETRO:

13 Q Why did Mrs. Clinton borrow funds to build  
14 a model home on lot 13?

15 A Well let me direct your attention to a  
16 document, if I may have just a moment. The  
17 description of lot 13 in terms of its financial  
18 effect obviously was something we were trying to  
19 understand. It's found at JML 101, which is the  
20 Patten report, paragraph 5 dated March 23, 1992.

21 Q Is that from the complete report?

22 A As you've used the term, yes. The

1 financial effects of lot 13 are identical in both  
2 this report as well as the summary.

3 Q Is it your understanding from reviewing  
4 point 5 that lot 13 was treated as a corporate asset  
5 by Whitewater Development Corporation?

6 A I don't remember how Whitewater treated it  
7 on its books and records. I believe, as indicated,  
8 what was recorded on the books and records was, as it  
9 says in the first paragraph there, point 5 on JML  
10 101, a loan payable to her by Whitewater Development.

11 Q Did you investigate the transaction  
12 between Whitewater Development Corporation and  
13 International Paper?

14 A When?

15 MR. COLE: You're asking, Mr. Lyons, at  
16 what time period Mr. Jiampietro is asking you did you  
17 investigate International Paper?

18 THE WITNESS: Yes, I am.

19 MR. JIAMPINETRO: Why don't we start with  
20 during the campaign.

21 THE WITNESS: No, I didn't investigate it  
22 then. We didn't know about it.

1 BY MR. JIAMPIETRO:

2 Q When did you learn of this transaction?

3 A Sometime in 1993.

4 Q How did you learn of this transaction?

5 A I think through the press in statements  
6 attributed to Mr. McDougal.

7 Q Who asked you to look into this  
8 transaction?

9 A In 1993?

10 Q Yes.

11 A Nobody. I looked into it for my own  
12 purposes.

13 Q What purposes were those?

14 A I wanted to know about this transaction.  
15 It apparently was one that related to Whitewater  
16 Development Corporation which had not appeared on the  
17 books and records or other materials that we reviewed  
18 in March of 1992. We later determined that the  
19 transaction was done by Mr. McDougal without any  
20 knowledge or disclosure to the Clinton's and in fact  
21 had not been run through the books and records of  
22 Whitewater Development Corporation.

1 As I believe I recall he said publicly and  
2 has since testified that the transaction with  
3 Whitewater Development Corporation and International  
4 Paper is one he did without any disclosure to the  
5 Clinton's. I think what he said, and this is memory  
6 now, I think he said was he was hopeful to use some  
7 net loss carryforward in Whitewater to shelter any  
8 gain he might get out of International Paper. The  
9 deed to the property I believe was held at one point  
10 by Whitewater Development Corporation and then  
11 transferred by Mr. McDougal to another corporation, a  
12 name which I don't remember, which he also  
13 controlled.

14 The mortgage or indebtedness incurred in  
15 connection with that transaction was ultimately not  
16 paid and the subject of a foreclosure, all of which  
17 was unknown to us in 1992, unknown to the Clinton's  
18 and not run through or apparent from the books and  
19 records of Whitewater Development Corporation.

20 MR. COLE: Mr. Lyons, am I correct in  
21 understanding that this is the same land purchase  
22 transaction that recent testimony at the trial in

1 Little Rock would indicate that certain proceeds of  
2 the \$300,000 loan to Master Marketing was used for  
3 the purchase?

4 THE WITNESS: I believe that's right.

5 MR. COLE: And this is a transaction that  
6 you found the Clinton's had no knowledge of at the  
7 time?

8 THE WITNESS: Well that's right, and as  
9 McDougal has said both publicly and in testimony he  
10 didn't tell them about it.

11 BY MR. JIAMPIETRO:

12 Q Do you have any knowledge of whether Dan  
13 Lasater owned part of the International Paper  
14 property?

15 A I don't know.

16 Q As part of your investigation did you  
17 investigate whether money from Master Marketing went  
18 into Whitewater?

19 A Yes. As indicated in the Patten report,  
20 there was an advance from either Master Marketing or  
21 Madison Marketing at one time to Whitewater  
22 Development Corporation which was repaid by

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1 Whitewater Development Corporation. I seem to recall  
2 it was some \$5,700. Hang on and I'll give you the  
3 exact number. I'm sorry, I don't have it readily at  
4 hand.

5 MR. JIAMPIETRO: Would you please refer to  
6 document Bate stamped JML 2026.

7 THE WITNESS: I'm sorry, let me go back to  
8 my earlier answer. If you look at JML 015, fiscal  
9 year end May 31st, 1985 --

10 MR. JIAMPIETRO: One second, please, while  
11 we pull that document.

12 THE WITNESS: I'm sorry, 105. I  
13 apologize.

14 MR. JIAMPIETRO: I have it.

15 THE WITNESS: Schedule 1, Loans in  
16 Advances by McDougal's and Clinton's, do you see  
17 that?

18 MR. JIAMPIETRO: That's right.

19 THE WITNESS: Do you see the fiscal year  
20 end May 31st, 1985?

21 MR. JIAMPIETRO: I do.

22 THE WITNESS: The last line item.

1 MR. JIAMPIETRO: That's correct.

2 THE WITNESS: Madison Marketing,  
3 \$5,566.39. That advance or loan was made during the  
4 fiscal year which ended May 31st, 1985 and was  
5 obviously repaid in some fashion in the next fiscal  
6 year since the entry is zeroed out.

7 MR. JIAMPIETRO: As long as you've  
8 referred me to that schedule at JML 105, in the  
9 column May 31st, 1991, the fiscal year ending May  
10 31st, 1991 for Whitewater Development Company,  
11 Inc. --

12 THE WITNESS: Remember now that's two  
13 fiscal years.

14 MR. JIAMPIETRO: That's right.

15 THE WITNESS: '90 and '91. What's your  
16 question?

17 BY MR. JIAMPIETRO:

18 Q There are a number of entities described  
19 under McDougal Loans and Advances, and there are  
20 entries in this column for those companies, including  
21 Great Southern Land Company, Flowerwood Farms, Inc.,  
22 Pembroke Manor, McDougal & Associates, Rolling Manor,

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1 Inc., Tucker, Smith, McDougal. There are amounts  
2 listed in that column from those McDougal entities  
3 which are not zeroed out. Do you know if those  
4 monies were repaid to the McDougal entities?

5 A No, I don't know. After May 31st, 1991 I  
6 wouldn't know.

7 Q Do you recall discussing whether those  
8 monies or funds were ever repaid with anyone in the  
9 Clinton Presidential Campaign?

10 A Not specifically, no.

11 Q Generally?

12 A Well this is the sort of thing I would  
13 have discussed with Patten and Weese, but we did not  
14 have records, remember, past May 31st, 1991 at least  
15 that we regarded as reliable that could be used to  
16 project forward beyond that date as Mr. Patten and  
17 Mr. Weese say in their report.

18 Q Would you refer to documents Bate stamped  
19 JML 2026 through 2027, and also if you could refer to  
20 the documents Bate stamped JML 2028 through 2045.

21 A Wait a minute, 2026 to what?

22 Q 2045 consecutively.



1 A 2926 to 2045, yes, I have them.

2 Q Would these have been the documents that  
3 you collected with regard to the International Paper  
4 transaction?

5 A No.

6 Q Would you please describe these documents.

7 A These documents are documents that I  
8 believe I have been instructed to assert a privilege  
9 over. Frankly, I'm not sure in my own mind if that  
10 instruction still obtains. I therefore am trying to  
11 reach Mr. Kendall to seek his instruction with regard  
12 to these documents. If they are to be retained as  
13 privileged, I'll certainly let you know that, and if  
14 not I'll be happy to forward them to you, but they do  
15 not relate to International Paper.

16 Q The first document is a letter --

17 A Well, strike that. I don't want to  
18 mislead you, counsel. They may in fact, and I'm also  
19 mindful of the privilege that I don't want to  
20 inadvertently waive here, and I hope you understand.  
21 These documents in a generic sense may relate to in  
22 part the International Paper transaction about which

1 you've inquired. So I don't want to mislead you  
2 about that.

3 MR. JIAMPIETRO: Well I'm just trying to  
4 understand certain factual circumstances with regard  
5 to these documents, and I will try to refrain right  
6 now from asking you to give me any substance of a  
7 privileged communication.

8 THE WITNESS: Okay, fair enough.

9 MR. JIAMPIETRO: In reviewing these  
10 documents, the first document in the set is a letter  
11 from John R. Tisdale of Wright, Lindsey & Jennings to  
12 you dated October 13th, 1993, re Whitewater  
13 Development, Inc.

14 MR. HADDON: Could you stop at this point.  
15 Do you have these documents?

16 MR. JIAMPIETRO: I do have these  
17 documents.

18 THE WITNESS: Well that probably solves my  
19 problem.

20 MR. HADDON: If you have the documents  
21 then it must have been determined that they're not  
22 privileged. That would be my supposition and, if so,

1 I think you can ask about them.

2 MR. JIAMPIETRO: The date of this letter  
3 is October 13th, '93 and, as I understand it, the  
4 privilege issue arises subsequent to October 31st,  
5 1993, and certainly any privileged communications  
6 which you had after October 31st, 1993 you can claim  
7 privilege on. Since you've provided these documents  
8 and this letter I was --

9 MR. COLE: I'm trying to understand what  
10 the possible issue is here. Is the issue that while  
11 these documents obviously based on the transmittal  
12 letter were transmitted on or about October 19th,  
13 1993, Mr. Lyons and Mr. Haddon, is the issue that Mr.  
14 Lyons may have had discussions after October 31st?

15 MR. HADDON: No. Frankly from our copies  
16 we thought that they had not been produced because of  
17 some claim of privilege, but since they were produced  
18 and given the date we have no objection to answering  
19 questions about them. So it's a mistake from our  
20 end. We didn't think we had produced them. If Mr.  
21 Jiampietro has them, obviously we did, and the  
22 privilege issue has already been resolved. So you

1 can go forward.

2 THE WITNESS: These documents relate in  
3 part, just to give you some context, relate in part  
4 to what I was trying to determine and learn about the  
5 International Paper transaction that we've been  
6 discussing to this point, and what they represent is  
7 a letter or memorandum to me from John Tisdale and  
8 from the Wright, Lindsey & Jennings firm attaching  
9 some public documents, deeds and the like, which he  
10 obtained from the records of the Polasky County I  
11 assume Clerk and Recorder's Office relative to the  
12 transaction.

13 MR. COLE: And this is something that you  
14 obtained after you read about the International Paper  
15 transaction in the newspapers and wanted to obtain  
16 some additional information about?

17 THE WITNESS: Yes. It was after I had  
18 learned that this transaction existed.

19 MR. COLE: Why don't we let Mr. Jiampietro  
20 ask his questions about the documents then.

21 THE WITNESS: And I apologize for any  
22 misunderstanding about the documents.

1 MR. COLE: I think it's clear now.

2 BY MR. JIAMPIETRO:

3 Q Turn to page 2 of the letter.

4 A All right.

5 Q The second full paragraph on JML 2027  
6 states in part "In addition, December 15th, 1986  
7 Whitewater Development Corp transferred to the 810  
8 acres to Great Southern Land Company, Inc. by  
9 warranty deed. There is no specific mention of the  
10 existing mortgage. The deed does provide, however,  
11 that it is subject to all existing leans and  
12 restrictions. The deed is signed only by Jim and  
13 Susan McDougal. The deed was prepared by the law  
14 firm of Overby & Denninger here in Little Rock. I  
15 know Tom Overby and could make some discreet  
16 inquiries of him concerning this transaction if you  
17 think it might be helpful."

18 Did you ask Mr. Tisdale to make those  
19 inquiries?

20 A I don't recall if I did or not.

21 Q Do you recall whether or not you learned  
22 anything from Mr. Overby subsequent to the

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1 preparation of this letter?

2 A No, I didn't.

3 Q Was the mortgage transferred to GSLC or  
4 Great Southern Land Company?

5 A I don't know. I know that there was a  
6 foreclosure on the mortgage and a whatever the  
7 Arkansas equivalent is of a judgment in foreclosure  
8 taken against Whitewater Development Corporation.  
9 Whether or not it was taken against the Great  
10 Southern Land Company or not I do not know.

11 MR. COLE: Can we go off the record for a  
12 moment.

13 (Discussion off the record.)

14 MR. JIAMPIETRO: Back on the record.

15 The last paragraph on page 2 of the letter  
16 states "The Secretary of State is checking its  
17 archives for Master Marketing. As soon as we get  
18 that information we will pass it on. They confirmed  
19 that Madison Marketing is a fictitious name for  
20 Madison Financial Corporation. Madison Financial  
21 Corporation was a holding company for Madison  
22 Guaranty Savings, which was the banking entity owned

1 by Jim McDougal. Madison Financial Corporation was  
2 incorporated in 1982 and the fictitious name was  
3 filed in July of 1986."

4 MR. HADDON: Is there a question?

5 BY MR. JIAMPIETRO:

6 Q Did you discuss your investigation into  
7 Master Marketing and Madison Marketing with the  
8 Clinton's?

9 A Well other than to this extent I don't  
10 believe so. I believe by looking at the report we  
11 submitted Mrs. Clinton knew and presumable Governor  
12 Clinton knew that an advance had been made at one  
13 point from either Master Marketing or Madison  
14 Marketing through or by the McDougal's to Whitewater  
15 Development Corporation and that it had been repaid.

16 MR. JIAMPIETRO: Could you please refer,  
17 and actually I don't know if you have this document.  
18 We may have to describe it to you.

19 Off the record a moment.

20 (Discussion off the record.)

21 MR. JIAMPIETRO: On the record.

22 In a letter from Alan R. Snyder to Robert

1 J. Jiffer on March 1st, 1996 regarding document  
2 production of Bruce R. Lindsey certain additional  
3 documents were produced to the Special Committee by  
4 Mr. Lindsey. In the cover letter accompanying those  
5 notes it states in part "The document set forth as  
6 Attachment B hereto was also just discovered by us  
7 and we understand represents Mr. Lindsey's  
8 handwritten notes of conversations with Bill Kennedy  
9 and Jim Lyons in the fall of 1993 which were  
10 precipitated by a press inquiry."

11 The first seven lines of these notes  
12 reflect what Mr. Kennedy informed Mr. Lindsey that  
13 Mr. Randy Coleman had said to Mr. Kennedy in a  
14 telephone conversation. The next two lines reflect  
15 discussion between Mr. Kennedy and Mr. Lindsey. The  
16 last four lines relate to a separate telephone  
17 conversation between Mr. Lindsey and Mr. Lyons. I'm  
18 only interested in asking you questions regarding the  
19 last four lines.

20 THE WITNESS: I'm sorry, what's the date  
21 of this alleged conversation?

22 MR. JIAMPIETRO: It occurred in the fall



1 of 1993 according to the cover sent to us by Hogan &  
2 Hartson.

3 MR. COLE: The notes are not dated?

4 MR. JIAMPIETRO: The notes themselves are  
5 not dated. The last four lines on the last page of  
6 notes state Jim Lyons, Madison Marketing-loan or  
7 contribution, Paragould, Perryville.

8 BY MR. JIAMPIETRO:

9 Q Do you recall a conversation with Mr.  
10 Lindsey in the fall of 1993 in which these topics  
11 were discussed?

12 A No. I don't have any specific  
13 recollection of that, but I don't doubt that we  
14 talked about it.

15 Q Could you explain the meaning of the note,  
16 Madison Marketing - loan or contribution?

17 A No. I don't know what that means.

18 Q I would like to refer you to document Bate  
19 stamped JML 2046.

20 A All right, I have it.

21 Q It's a letter dated October 18th, 1993  
22 from Yoly Redden to you regarding Whitewater

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1 Development Company which states "At your request I  
2 am enclosing copies of Whitewater Development  
3 Company's income tax returns for the fiscal years  
4 ended May 31st, 1990, 1991 and 1992 which were sent  
5 to you via facsimile last week. If you need  
6 additional information please let me know."

7 Do you recall receiving this letter?

8 A Well not specifically, but I'm sure I got  
9 the letter and the attachments.

10 Q Did you review the income tax returns  
11 mentioned in the letter?

12 A Well I don't know that I reviewed them,  
13 but I'm sure I looked at them before I filed them.

14 MR. COLE: By filed do you mean filed in  
15 your own personal files as opposed to filed them with  
16 the IRS?

17 THE WITNESS: Yes, filed in my own files.

18 BY MR. JIAMPIETRO:

19 Q Did you come to learn that there were  
20 discrepancies between these tax returns and the work  
21 sheets attached to the report prepared by Patten,  
22 McCarthy?

1 A I think I learned later that there were, I  
2 don't know if I would call them discrepancies because  
3 they're prepared for different purposes, but, yes, I  
4 knew that there were some variations.

5 Q Specifically did you know that there were  
6 different amounts listed for cash, notes receivable  
7 and land?

8 A I don't remember that.

9 Q So you never discussed that with anyone in  
10 the Clinton Presidential Campaign or anyone in the  
11 White House who was preparing or involved in the  
12 preparation of the Whitewater returns?

13 A Well the Presidential campaign was over by  
14 October of 1993 and, as I recall, these tax returns  
15 had been filed with both the Internal Revenue Service  
16 and the State of Arkansas in the late summer or early  
17 fall of 1993, and Ms. Redden I think was the one who  
18 prepared the returns and filed them.

19 Q You never discussed these differences  
20 between the Patten, McCarthy report and the  
21 Whitewater corporate tax returns with anyone?

22 A Well I might have discussed them with

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1 Patten at sometime or another. I don't have any  
2 specific recollection of those discussions, but we  
3 might have talked about it at one point.

4 Q Did you ever discuss these differences or  
5 any differences between the Whitewater returns and  
6 the Patten, McCarthy report with anyone within the  
7 White House?

8 A Well I may have discussed them with  
9 Lindsey, I can't rule that out, and I may have  
10 discussed them with Vince Foster, but again I don't  
11 have any specific recollection of any discussions  
12 like that.

13 Q Were you concerned about these  
14 differences?

15 A Not particularly.

16 Q Why is that?

17 A As I explained to you, the tax returns are  
18 done using different techniques for different periods  
19 of time and were done for a different purpose than  
20 the one for which we did our work back in March of  
21 1992.

22 Q As I understand it, there may be

1 differences in terms of financial accounting and  
2 income tax accounting with regard to income and  
3 expenses, but as it relates to assets and the value  
4 of assets are you aware of any reason why there would  
5 be a difference in the amounts listed on the  
6 corporate returns and the Patten, McCarthy report?

7 A The Patten, McCarthy report was an effort,  
8 as you know, to try and reconstruct what had occurred  
9 in Whitewater Development Corporation, who had put in  
10 money, what money had been spent and as best we could  
11 determine where the money had come from. That's a  
12 wholly different purpose than trying to calculate  
13 income tax for a corporation that has never made any  
14 money.

15 Q Were you aware of any delay in filing the  
16 Whitewater corporate income tax returns?

17 A Well I was aware that for a year, and  
18 maybe more than one, corporate tax returns had not  
19 been filed for Whitewater Development Corporation,  
20 and it was for that reason I believe that Ms. Redden  
21 was asked to complete the work so that tax returns  
22 could be filed for Whitewater Development

1 Corporation.

2 Q When did you first learn that Whitewater  
3 corporate tax returns were delinquent?

4 A Oh, I don't remember that.

5 Q Did you ever discuss that with the  
6 Clinton's?

7 A I don't know. My remembrance is I  
8 discussed it with Vince Foster.

9 Q Let me just refer you to a number of  
10 documents and ask you some questions regarding them.

11 JML 2674.

12 A Before we leave the tax returns, remember  
13 this was a company that never made any money. It  
14 never owned any tax. The question was whether or not  
15 its returns had been filed largely as an  
16 informational exercise, and we wanted to make sure  
17 that those returns did get filed as promptly as they  
18 could be.

19 Now, I'm sorry, what was the page you  
20 wanted me to look?

21 Q 2674.

22 A Okay.

1 Q Did you prepare this note?

2 A I don't recognize it.

3 Q Is it your handwriting?

4 A I don't think so. It doesn't appear to be  
5 my handwriting.

6 MR. COLE: Off the record.

7 (Remarks off the record.)

8 MR. JIAMPINETRO: Back on the record.

9 BY MR. JIAMPINETRO:

10 Q The document appears to be a handwritten  
11 note on stationery for U.S. Auto Glass Centers, Inc.,  
12 in Little Rock, Arkansas. There are two dates below  
13 the corporate heading, 12/31/86 and 1/13/87. It  
14 states "FF Inc. paid \$1,418.49 to First Ozark  
15 National for WW loan No. 5885."

16 Do you know what this note means?

17 A No. It may have something to do with the  
18 preceding document, but I don't know.

19 Q Do you recall any monies being paid by  
20 Flowerwood Farms, Inc. to First Ozark National Bank  
21 on behalf of Whitewater Development Corporation?

22 A No. I know that there were advances made

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1 either by or through Flowerwood Farms as reflected in  
2 the Patten report, but I don't know anything about  
3 this note.

4 Q Please refer to JML 2633.

5 A Okay.

6 Q Did you prepare this note?

7 A No. It's not my handwriting.

8 Q Would you take a moment to review the  
9 note.

10 A Okay.

11 Q Do you recall anything regarding this  
12 note?

13 A No.

14 Q Let's move on. In notes that were  
15 produced to us that were taken by Vincent Foster  
16 there is a entry that I would like to ask you about.

17 A All right.

18 Q The entry states "Weese -- and it's  
19 underlined -- sometimes relied on Clinton's tax  
20 returns as evidence."

21 Do you know whether Mr. Weese or Mr.  
22 Patten relied on Mr. Clinton's tax returns as



1 evidence in preparing the Patten, McCarthy report?

2 A Yes. I believe they did. It was one of  
3 the source materials they used and I think they  
4 referenced in their report.

5 Q Another entry on these notes under Weese  
6 states --

7 A These are Foster notes now?

8 Q These are Foster notes Bate stamped DKS  
9 000516. It states "Was -- and there are the initials  
10 MCD -- MCD trying to circumvent bank loss - why HRC  
11 getting loan from other?"

12 MR. COLE: I'm sorry, is the word bank  
13 laws, l-a-w-s, or bank loss, l-o-s-s? I could not  
14 understand you.

15 MR. JIAMPIETRO: It appears as loss.

16 MR. COLE: L-o-s-s?

17 MR. JIAMPIETRO: L-o-s-s.

18 THE WITNESS: And what is the Bate  
19 reference again, please?

20 MR. JIAMPIETRO: There is no date  
21 reference.

22 THE WITNESS: No, the Bate reference.

1 MR. JIAMPIETRO: Bates No. DKS 000516.

2 THE WITNESS: And your question is?

3 BY MR. JIAMPIETRO:

4 Q Do you know what this note means?

5 A No.

6 Q Did you ever discuss the substance of this  
7 note with Mr. Weese?

8 A No.

9 Q Mr. Foster?

10 A I don't think so.

11 Q Mr. Patten?

12 A I don't think so.

13 Q Were you involved in the preparation of  
14 the Clinton's 1992 personal income tax returns?

15 A No.

16 Q Did you discuss the preparation of those  
17 returns with anyone at the time that they were being  
18 prepared?

19 A Yes. I had discussions with Vince Foster  
20 at that time.

21 Q Did you discuss the treatment of the  
22 Clinton sale of their interest in Whitewater

1 Development Corporation to the McDougal's?

2 A Yes.

3 Q Would you please describe the substance of  
4 those conversations.

5 A Mr. Foster and I agreed that given the  
6 state of the records of Whitewater Development  
7 Corporation it would be difficult, in our judgment,  
8 to document and support the loss that would survive  
9 an IRS audit. We also believed that the amount of  
10 loss that could be taken was de minimis in that it  
11 would be in the nature of a long-term capital loss,  
12 which as I recollect would be subject to a \$3,000 per  
13 year or some number like that loss, and that it  
14 didn't seem to be worth all the brain damage to take  
15 the loss.

16 Q How often did you talk to Mr. Foster about  
17 this issue?

18 A Oh, just a few times.

19 Q When was the last time you talked to  
20 Vincent Foster?

21 A Ever?

22 Q Ever.

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1 A Several days before his death.

2 Q Did he tell you what was troubling him?

3 A I'm not going to go into that. I think  
4 that's beyond the scope of this deposition. It  
5 didn't have anything to do with Whitewater if that's  
6 what you're after.

7 Q Did he ask your recommendations for  
8 personal attorneys?

9 MR. COLE: That's outside the scope of the  
10 Resolution as well.

11 MR. JIAMPINETRO: As I understand it --

12 MR. COLE: The handling of the documents  
13 in Mr. Foster's office certainly are within the scope  
14 of this Committee's inquiry, but the reasons for Mr.  
15 Foster's suicide were investigated by the Senate  
16 Banking Committee in 1994, a report was released and  
17 that was not included in the Resolution that  
18 authorized this investigation. So unless you can  
19 articulate a relationship to the handling of the  
20 documents in Mr. Foster's office, Whitewater  
21 Development Corporation, Madison Guaranty or the  
22 other subjects in Senate Resolution 120, I would

1 instruct Mr. Lyons not to answer that question.

2 MR. HADDON: And I join in that objection  
3 and instruction.

4 MR. JIAMPIETRO: Senate Resolution 120  
5 states in part "The purposes of the Special Committee  
6 are, one, to conduct an investigation and public  
7 hearings into and study of whether improper conduct  
8 occurred regarding the way in which the White House  
9 officials handled documents in the office of White  
10 House Deputy Counsel Vincent Foster following his  
11 death.

12 MR. COLE: I just said that.

13 MR. JIAMPIETRO: The questions that I'm  
14 raising here are relevant to a discussion of whether  
15 or not government attorneys serving the President in  
16 the White House were properly involved in handling  
17 personal matters for the President, and I believe  
18 that is perfectly within the scope of this  
19 investigation.

20 MR. HADDON: Your question, as I recall  
21 it, was what was troubling Mr. Foster and whether  
22 while he was still alive he had certain discussions

1 with Mr. Lyons. I don't see how that possibly has  
2 any relevance to misconduct alleged or otherwise that  
3 occurred after his death. They're totally unrelated.

4 MR. JIAMPIETRO: Well if Mr. Foster had  
5 discussed with Mr. Lyons whether he had any  
6 recommendations for personal attorneys to advise him  
7 on possible ethical violations for handling personal  
8 Clinton issues relevant to Whitewater while he was  
9 employed by the White House I believe that is part of  
10 this investigation. If he did not discuss those  
11 issues and those issues were not part of the  
12 discussions, then that is fine and you can respond in  
13 that way to my question.

14 MR. HADDON: I will rely on Mr. Cole for  
15 what the scope of the Resolution is or isn't, but my  
16 recollection is, first of all, that this matter has  
17 been already the subject of inquiry and report and,  
18 secondly, I don't see a relationship. But I will  
19 rely ultimately on Mr. Cole's judgment.

20 MR. COLE: If Mr. Lyons can provide any  
21 testimony that relates in any way to Whitewater  
22 Development Corporation or the other matters in

1 Senate Resolution 120 with respect to his  
2 conversations with Mr. Foster before Mr. Foster's  
3 death I would ask him to provide that testimony. If  
4 there is no such relationship, then I don't believe  
5 it's within the scope of this Resolution, and I would  
6 suggest that he not answer the question.

7 THE WITNESS: I believe there is none, and  
8 I will not answer the question.

9 MR. COLE: And Mr. Jiampietro is well  
10 aware of the procedure laid out in the Resolution.  
11 If he wishes to do so, he can get a ruling from the  
12 Chairman, but I suspect that if there Mr. Lyons  
13 believes there is no relationship to Whitewater  
14 Development Corporation that that would be a waste of  
15 all of our time.

16 MR. HADDON: Are we at a point where we  
17 can take about a five-minute break?

18 MR. COLE: Sure. It's a good time I  
19 think.

20 MR. JIAMPIETRO: Sure.

21 (Recess taken.)

22 MR. JIAMPIETRO: Back on the record.

1 EXAMINATION (Continued)

2 BY MR. JIAMPIETRO:

3 Q You noted, Mr. Lyons, I believe that you  
4 did not discuss any issues relating to Whitewater  
5 with Vince Foster in the days leading up to his death  
6 in a way which suggested that these issues were  
7 troubling him; is that correct?

8 A Generally.

9 Q Did you discuss in any way whether or not  
10 he was concerned about issues regarding the handling  
11 of the Travel Office firings in the White House?

12 MR. COLE: Before you answer that  
13 question, Mr. Lyons, I believe the objection I made  
14 previously before we took a break still stands and,  
15 as I did before, I would invite Mr. Jiampietro to  
16 describe for me and for you and your counsel how his  
17 question relates to any of the matters that are set  
18 forth in Senate Resolution 120 because frankly I  
19 don't see any such connection. Unless I do see such  
20 a connection, I think that we do not have authority  
21 under our Resolution to ask that question, and I  
22 would on that basis instruct you not to answer the



1 question.

2 MR. HADDON: I would add that Mr. Lyons  
3 has and will continue to answer any questions  
4 relating to conversations with Mr. Foster about  
5 Whitewater matters, but that question, in my view, is  
6 not remotely relevant to those Whitewater matters.

7 MR. JIAMPIETRO: Well pursuant to Section  
8 1.B.1. of Senate Resolution 120 the Special Committee  
9 is authorized to conduct an investigation and public  
10 hearing into whether improper conduct occurred  
11 regarding the way in which White House officials  
12 handled documents in the office of White House Deputy  
13 Counsel Vince Foster following his death.

14 I believe Mr. Foster's state of mind and  
15 whether or not he was communicating his concerns  
16 regarding various matters before him may have  
17 influenced the way other persons handled documents in  
18 his office, and I believe therefore that this  
19 particular line of questioning falls under the scope  
20 of Senate Resolution 120.

21 MR. COLE: Well I'm thinking hard about  
22 what you just said, Mr. Jiampietro, but it seems to

1 me be an entirely speculative predicate for your  
2 question in an effort to inquire into areas that bear  
3 no relation to the matters that this Committee is  
4 authorized to investigate.

5 So again, Mr. Lyons, I would instruct you  
6 not to answer that question, and Mr. Jiampietro  
7 chooses to follow the procedure in the Resolution to  
8 pursue the matter that's his judgment.

9 MR. JIAMPIETRO: The question still stands  
10 and the witness can --

11 MR. COLE: I've instructed him not to  
12 answer. So the witness doesn't have to do anything  
13 at this time. I've given him an instruction which  
14 I'm entitled to do under the Resolution. Now the  
15 ball is in your court and you can decide whether you  
16 want to go to the Chairman and get a ruling. If the  
17 Chairman should rule against me, then the ball will  
18 be in the witness' court. But right now the ball is  
19 in your court and not in the witness' court.

20 MR. JIAMPIETRO: We will move on.

21 BY MR. JIAMPIETRO:

22 Q Mr. Lyons, Mr. Foster's phone log Bate

1 stamped Z001217, which was produced to the Special  
2 Committee dated July 20th, 1993, shows that he  
3 received a call from you at 11:11 a.m. on July 20th,  
4 1993, the morning of his death. Do you recall making  
5 this telephone call?

6 A Yes.

7 Q Did you talk to Mr. Foster?

8 A No.

9 Q Why were you calling Mr. Foster?

10 A None of your business.

11 Q Did your call have anything to do with  
12 Whitewater?

13 A No.

14 Q Or the handling of Whitewater by the  
15 officials in the White House?

16 A No.

17 Q Did you plan to meet with Mr. Foster?

18 A None of your business.

19 Q Other than the preparation of the  
20 Clinton's 1992 personal income tax return, which  
21 you've previously testified to, did you discuss  
22 Whitewater with Mr. Foster while he was at the White

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1 House?

2 A From time to time and in a general way.

3 Q Could you please describe the nature of  
4 those discussions?

5 A I don't have any specific recollection.

6 Q Other than their 1992 personal income tax  
7 return, did you discuss the tax liability of the  
8 Clinton's relating to Whitewater with Mr. Foster?

9 A I don't know what tax liability you're  
10 referring to.

11 Q Any tax liability arising out of their  
12 investment in Whitewater.

13 A There wasn't any. There wasn't anything  
14 to discuss.

15 Q As you know, on several occasions after  
16 Mr. Clinton was elected President payments were made  
17 to the IRS relating to items that had been deducted  
18 by the Clinton's on their personal income tax  
19 returns. Did you discuss these items or any related  
20 issues with Mr. Foster while he was at the White  
21 House?

22 A I have no specific recollection, but I may

1 have.

2 Q When did you last talk to Mr. Foster about  
3 Whitewater?

4 A I don't remember.

5 Q Who in the White House did you talk to  
6 about the documents in Vincent Foster's office?

7 A When?

8 Q During the period from January of 1993  
9 through -- from the period after the inauguration.

10 MR. COLE: I don't understand the  
11 question.

12 THE WITNESS: I don't either. I'm sorry,  
13 I don't.

14 MR. COLE: The documents in Vince Foster's  
15 office?

16 BY MR. JIAMPIETRO:

17 Q Did you ever discuss with anyone in the  
18 White House the handling or disposition of documents  
19 in Vincent Foster's office after his death?

20 A Yes.

21 Q Please describe the substance of those  
22 conversations.

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1 A I recall a conversation with Bernie  
2 Nussbaum after Mr. Foster's death in which he  
3 described to me and others the method by which he had  
4 done a search of the documents in Mr. Foster's office  
5 in order to preserve privilege on the one hand while  
6 on the other hand allowing reasonable and legitimate  
7 access to the law enforcement authorities  
8 investigating Mr. Foster's death.

9 Q When did this discussion occur?

10 A Well it was after the fact. So whenever  
11 that was, four or five days or a week after Vince's  
12 death.

13 Q When did you learn that a note or writing  
14 by Vincent Foster had been discovered?

15 A I don't remember exactly when I learned  
16 that.

17 Q Roughly?

18 A I don't remember roughly.

19 Q A month after his death?

20 A I don't remember.

21 Q Who would have told you?

22 A I think I learned it from the press.

1 Q Did you read it in the paper or did you  
2 learn it from a reporter?

3 A I don't remember.

4 Q Did you ever give Mr. Foster a copy of the  
5 complete report that was prepared by Patten, McCarthy  
6 as we've been referring to it?

7 A I'm sure I did.

8 Q Did you give it to him after January 19,  
9 1993?

10 A I don't recall, probably before.

11 Q Did you ever tell Mr. Lindsey that you had  
12 given a copy of the complete report to Mr. Foster?

13 A I may have.

14 Q You have no specific recollection?

15 A No. That doesn't mean I didn't, but I  
16 don't have any specific event or occasion in mind.

17 Q Did you ever talk to Yoly Redden?

18 A I think I may have. I don't think I've  
19 ever met her in person, but I think I've talked to  
20 her on the phone.

21 Q Could you describe the substance of those  
22 conversations?

1 A No, I really don't remember what they  
2 were. I believe they were in the context of getting  
3 copies the Whitewater Development Corporation's  
4 income tax returns which she prepared.

5 Q Did she ever tell you when she learned of  
6 Whitewater?

7 A She may have. I don't remember.

8 Q Did you discuss the treatment of the  
9 Clinton's sale of their interest in Whitewater on  
10 their 1992 personal income tax return with her?

11 A I don't know. I don't have a specific  
12 recollection of that.

13 Q Do you have any knowledge of any shredding  
14 or any other document destruction during the 1992  
15 campaign?

16 A No.

17 Q Did you ever talk to Loretta Lynch with  
18 regard to Whitewater?

19 MR. COLE: He had already testified to  
20 that. I mean he has testified at great length about  
21 obtaining information pertaining to Whitewater from  
22 Ms. Lynch.



1 MR. JIAMPIETRO: In his November 2nd, '92  
2 deposition?

3 MR. COLE: No, here today.

4 MR. JIAMPIETRO: I want to get a sense of  
5 how often he talked to her and how many times. I  
6 think I've asked him some specific questions  
7 regarding Ms. Lynch and memorandums he may have  
8 received from Ms. Lynch, but I don't think I've asked  
9 him how often he met with Ms. Lynch or spoke with Ms.  
10 Lynch during the Clinton Presidential Campaign and  
11 after the Clinton Presidential Campaign.

12 MR. COLE: Well I might or might not have  
13 objections to that question, but even that is a  
14 different question when what you asked him.

15 MR. JIAMPIETRO: Let me rephrase the  
16 question.

17 BY MR. JIAMPIETRO:

18 Q Could you please describe the extent of  
19 your contacts with Loretta Lynch regarding Whitewater  
20 during the Clinton Presidential Campaign.

21 A Extensive.

22 Q Could you please give us a more detailed

1 description of the extent of your contacts.

2 A Counsel, I talked with Ms. Lynch quite a  
3 bit as we were assembling the documents necessary to  
4 perform the analysis that Patten, McCarthy performed.  
5 I talked to her by phone when I was in Little Rock,  
6 and I spent a fair amount of time with her. I had  
7 extensive contact with Ms. Lynch during the  
8 assemblage, the review, the analysis and the  
9 preparation of the report which was issued in late  
10 March of 1992.

11 Q How about after the campaign?

12 A Oh, I would talk to her from time to time.

13 Q With regard to Whitewater?

14 A Sometimes as it would come up in the press  
15 from time to time.

16 Q Who was your primary contact in the  
17 campaign for issues with regard to the report?

18 A I'm not sure I know what you mean.

19 Q Did you have a primary contact in the  
20 Clinton Presidential Campaign?

21 A Well I'm not sure I know what you mean by  
22 primary contact. I dealt with a number of people in

1 the campaign and, depending on the issue, it may have  
2 been more than one person.

3 Q Could you please describe for us the  
4 persons, other than Ms. Lynch who you have testified  
5 about, who you would have contact with in the Clinton  
6 Presidential Campaign with regard to Whitewater. You  
7 just noted that it would depend on the issue, and if  
8 you could let us know which issues were referred to  
9 which people, that also would be helpful.

10 A I'm not going to go into that except as  
11 far as it relates to Whitewater Development  
12 Corporation.

13 Q That's what I'm asking you.

14 A I would deal, as I described earlier, with  
15 Mrs. Clinton from time to time, obviously with  
16 Messrs. Patten and Weese, I would talk with Mr.  
17 Linsey from time to time and the others who I've  
18 described here who were participating and assisting  
19 us in getting the information together so it could be  
20 analyzed and appropriate conclusions could be drawn.  
21 From time to time I talked to some of the other  
22 lawyers involved, like Jim Hamilton and Tony

1 Harrington as I remember. From time to time I would  
2 talk to some of the what I would call campaign  
3 management, people like Mickey Cantor and Eli Segal.

4 Q Regarding Whitewater issues?

5 A Well where we were in the report and when  
6 it was likely to be produced and that sort of thing.  
7 The substantive input and the substantive analysis  
8 again was the work of principally Les Patten and  
9 Norris Weese.

10 Q Did you ever meet with the Clinton's to  
11 discuss Whitewater?

12 A Together?

13 Q Let's take Hillary Clinton first.

14 A Sure.

15 Q How often did you meet with her to discuss  
16 these issues?

17 A A few times, as I said three hours ago. I  
18 think we're going around in circles here, counsel,  
19 and I'm wondering if this is a new line of inquiry  
20 you want to start?

21 MR. JIAMPIETRO: I'm just inquiring into  
22 the scope and extent broadly and more generally of

1 your contacts with various people within the Clinton  
2 Presidential Campaign. I know we have previously  
3 discussed some specific contacts that you may have  
4 had with Mrs. Clinton and others, but I'm just  
5 inquiring more broadly now into the scope and extent  
6 of your contacts more generally with people in the  
7 campaign.

8 MR. COLE: I would note one thing for the  
9 record and also for the benefits of Mr. Lyons and Mr.  
10 Haddon who are not physically present here and are  
11 participating by telephone. It appears that Mr.  
12 Jiampietro is now working off a list of questions  
13 that perhaps another lawyer on the majority staff has  
14 prepared for him, and it seems to me that we're  
15 recovering ground that in large measure we have  
16 already covered. I don't know that I can do anything  
17 about that other than note on the record that I once  
18 again think that that's both unfair to the witness  
19 and unfair to me as Minority Counsel since I've as  
20 yet had not opportunity to question the witness, and  
21 probably as more time passes will have little  
22 opportunity to question the witness.

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1 MR. HADDON: And note my objection that  
2 it's repetitive, burdensome and oppressive to this  
3 witness and extremely costly.

4 MR. JIAMPETRO: I'm surprised to learn  
5 that one or two questions I may have asked that were  
6 repetitive are such a shock to some folks, and I  
7 would note for the record that I do not believe they  
8 are repetitive. I believe that this line of  
9 questioning is more general and does not repeat  
10 specifically some of the questions we went over  
11 earlier, and to be quite honest I think that these  
12 types of discussions really eat up time that we could  
13 use more efficiently to get through the questions  
14 that I have.

15 But to the extent that you folks want to  
16 take up the record noting your objections and trying  
17 to create arguments that I'm being repetitive, that's  
18 fine and we can engage in that for as long as you  
19 would like.

20 MR. HADDON: Well that would be  
21 repetitive, wouldn't it?

22 MR. JIAMPETRO: Yes, that would.

1 MR. HADDON: Ask your question if you  
2 would, please.

3 BY MR. JIAMPIETRO:

4 Q Did you ever meet with or speak with --  
5 well let's take those one at a time.

6 Did you ever meet with Governor Clinton  
7 during the Presidential Campaign to discuss  
8 Whitewater issues?

9 A Yes.

10 Q How often?

11 MR. COLE: We've already covered this.  
12 I'll note for the record that he interviewed Governor  
13 Clinton on more than one occasion and he could not  
14 recall the exact number of times. So once again  
15 we're covering things we've already covered.

16 Go ahead, Mr. Lyons.

17 THE WITNESS: That's my answer.

18 BY MR. JIAMPIETRO:

19 Q After the Clinton Presidential Campaign  
20 did you discuss Whitewater issues with Mrs. Clinton?

21 A With who?

22 Q With Mrs. Clinton.

1 A Yes, from time to time.

2 Q I have one follow-up question regarding  
3 the discussion we previously had regarding Web  
4 Hubbell and the meeting you had with Mr. Hubbell. At  
5 this point in time you might want to clarify a  
6 question that was raised earlier. I understand from  
7 our discussions off the record that you may have a  
8 clarification on a point.

9 A Yes. First of all, let me say I believe  
10 you were referring to a lunch that Mr. Hubbell and I  
11 had with others, and your specific question to me  
12 what whether or not I sent to Mr. Hubbell as well as  
13 to Mr. Kendall the documents which have been Bate  
14 stamped 2596 through 3219, and as near as I can  
15 determine by reviewing my records those documents  
16 were sent on to Mr. Kendall, I kept a copy for myself  
17 which I had produced now almost a year ago to the  
18 Senate, and I did not send a copy on to Mr. Hubbell.

19 Q Did anyone else attend the lunch with Mr.  
20 Hubbell?

21 A I think Jack Quinn was there and there may  
22 have been one or two others. I just really don't



1 remember.

2 Q Did you have ever handle, see, discuss or  
3 hear any discussions about any records relating to  
4 the Rose Law Firm's representation of Madison  
5 Guaranty?

6 MR. HADDON: What was that question again?

7 MR. COLE: I want to hear that one again,  
8 too. I think there were six questions in there by my  
9 count.

10 BY MR. JIAMPIETRO:

11 Q Did you ever handle, see, discuss or hear  
12 any --

13 MR. HADDON: Handle, see, discuss or hear?

14 MR. JIAMPIETRO: -- any discussions about  
15 any records relating to the Rose Law Firm's  
16 representation of Madison Guaranty?

17 MR. HADDON: I've got to object to the  
18 from of that because how can you handle a discussion.

19 BY MR. JIAMPIETRO:

20 Q Did you ever handle or see any records  
21 relating to the Rose Law Firm's representation of  
22 Madison Guaranty?

1 A I don't think so.

2 Q Did you ever discuss or hear any  
3 discussions about any records relating to the Rose  
4 Law Firm's representation of Madison Guaranty?

5 A Well not to make too fine a point of it, I  
6 was aware that the Rose Law Firm had done work for  
7 Madison Guaranty at various times.

8 MR. COLE: And just so we're clear on this  
9 record, there has been enormous press attention and  
10 publicity concerning the discovery of Rose Law Firm  
11 billing records in the White House in January of this  
12 year, and I take it, Mr. Jiampietro, that you're not  
13 inquiring as to whether Mr. Lyons' casual  
14 conversation has mentioned that press coverage  
15 because literally your question called for any  
16 discussions at any time on any topic related to Rose  
17 Law Firm billing records, which seems to me to be an  
18 extraordinarily broad question, but Mr. Lyons I'm  
19 sure can deal with the question.

20 MR. HADDON: I think he has answered the  
21 question.

22 BY MR. JIAMPIETRO:

1 Q I would like to turn to the November 5th,  
2 1993 meeting.

3 A What meeting?

4 Q I'm going to tell you in a minute.

5 Between Mr. Kendall, Engstrom, Nussbaum, Lindsey,  
6 Eggleston, Kennedy and yourself regarding Whitewater.

7 A Oh, that meeting.

8 MR. COLE: I think I've heard something  
9 about that meeting before.

10 BY MR. JIAMPIETRO:

11 Q Who asked you to attend the meeting?

12 A I think Mr. Kendall or maybe Mr. Lindsey.

13 Q What was the purpose of the meeting?

14 A Oh, I think generally it was to help  
15 orient Mr. Kendall as to the issues which were then  
16 being referred to under the rubric of Whitewater and  
17 for which he had been personally engaged to represent  
18 the President and Mrs. Clinton.

19 Q Did you receive any documents from White  
20 House officials during the meeting?

21 A No.

22 Q What did White House officials tell you

1 about the progress of the RTC's investigation at the  
2 meeting?

3 A Nothing.

4 Q About the DOJ's investigation of David  
5 Hale?

6 A Nothing.

7 Q Do you recall who said "vacuum Rose Law  
8 Firm," or excuse me --

9 A You're assuming somebody said that, and I  
10 have no recollection that anybody said that.

11 Q Were there any instructions or suggestions  
12 relating to searching Rose Law Firm's files?

13 A Not that I recall.

14 Q Were any documents reviewed at the  
15 meeting?

16 A I did a handwritten sort of diagram that I  
17 think was passed around, and it has been produced to  
18 you. It is JML 3220. And there may have been  
19 others, but I really don't remember. I do remember  
20 that one, however.

21 Q Are you familiar with a report which was  
22 released on May 24th, 1996 in a letter from David

1 Kendall to the Honorable James A. Leach which was  
2 entitled "Review of Clinton Tax Adjustments Proposed  
3 by the House Committee on Banking and Financial  
4 Services"?

5 A Yes. I've seen the report.

6 Q Were you involved in the preparation of  
7 this report?

8 A No, I was not.

9 Q Do you know who actually prepared the  
10 report?

11 A Beyond what it says, no.

12 Q Did you review the report prior to its  
13 release?

14 A No.

15 Q Have you discussed the report with anyone  
16 in the White House?

17 A No.

18 Q Did you discuss the report with any of its  
19 authors?

20 A No.

21 MR. COLE: Gentlemen, I have good news.  
22 Mr. Jiampietro just picked up the last document in

1 his stack. That's the good news. The bad news is it  
2 appears to be a very thick of your handwritten notes.

3 MR. JIAMPETRO: Actually let me ask you  
4 several other questions before we turn to the notes.

5 MR. COLE: Now we've gone to a different  
6 list of questions.

7 BY MR. JIAMPETRO:

8 Q Could you please clarify for the record  
9 how you learned of the RTC criminal referrals  
10 involving Madison and Whitewater.

11 A I believe I either got a call from Jeff  
12 Gerth of the New York Times or Loretta Lynch called  
13 me after she got a call from Jeff Gerth of the New  
14 York Times on that subject, as I remember, sometime  
15 in the fall of 1993, maybe October.

16 Q As I understand it, in your deposition of  
17 November 2nd, 1995 you stated that you learned of the  
18 RTC criminal referrals from either Loretta Lynch or  
19 Jim Blair.

20 MR. HADDON: What page are you referring  
21 to?

22 MR. JIAMPETRO: Give us a moment. Page

1 61.

2 THE WITNESS: What did you say the page  
3 was?

4 MR. JIAMPIETRO: 61.

5 THE WITNESS: I don't find it on page 61.

6 MR. JIAMPIETRO: I'm working off of the  
7 complete transcript. You may have a condensed  
8 version.

9 MR. HADDON: It's a reference to Blair  
10 and --

11 THE WITNESS: Why don't we just cut to the  
12 chase here. Blair may have called me. It could have  
13 been Blair, it could have been Gerth or it could have  
14 been Loretta. It was one of those three.

15 BY MR. JIAMPIETRO:

16 Q Did you ever discuss the RTC criminal  
17 referrals with Jim Blair?

18 MR. COLE: I don't understand. If we  
19 already have his testimony, are we covering again  
20 things that are in the prior deposition, or is there  
21 a point to this?

22 MR. JIAMPIETRO: I asked him previously

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1 how he learned of the RTC criminal referrals, and now  
2 I'm asking him if he ever discussed the criminals  
3 referrals with Jim Blair.

4 MR. COLE: You asked him how he learned of  
5 them and he gave you best present recollection, and  
6 you told him what he said before. So my question is  
7 why are we covering things we've already covered?

8 MR. JIAMPIETRO: We have not covered this  
9 in the prior deposition.

10 BY MR. JIAMPIETRO:

11 Q Did you ever discuss the RTC criminal  
12 referrals with Jim Blair?

13 A Do you mean other than if Blair called me  
14 to tell me that Gerth had called him about it? Are  
15 you asking for something other than that?

16 Q Yes.

17 A I don't think so. It's possible I  
18 suppose, but I sure don't remember it.

19 MR. JIAMPIETRO: Why don't we move onto  
20 your notes now, and let's go off the record for a  
21 moment.

22 (Discussion off the record.)



1 MR. JIAMPIETRO: On the record.

2 Before we move on to your notes with  
3 regard to Whitewater I'm going to ask you some  
4 specific questions that do not relate to the notes.

5 BY MR. JIAMPIETRO:

6 Q What, if anything, did you tell Bruce  
7 Lindsey about your telephone deposition by the  
8 Special Committee prior to being deposed on November  
9 2nd, 1995 by the Special Committee?

10 MR. HADDON: I think the question has an  
11 internal inconsistency. You're asking what he told  
12 Mr. Lindsey about the deposition before it happened?  
13 I object to the form of the question.

14 MR. COLE: I don't understand. Are you  
15 asking him what subject matters that were covered in  
16 his deposition had he previously discussed with Mr.  
17 Lindsey? I don't understand the question at all.

18 MR. JIAMPIETRO: I will rephrase the  
19 question.  
20  
21  
22

1 BY MR. JIAMPIETRO:

2 Q Prior to your deposition by the Special  
3 Committee on November 2nd, 1995 did you discuss any  
4 issues relating to the deposition, either the process  
5 or the substance or the deposition, prior to the  
6 deposition with Mr. Lindsey?

7 MR. HADDON: I again object to the form of  
8 the question. If Mr. Lyons thinks he understands it  
9 I'll let him answer.

10 THE WITNESS: Well I'm not sure I  
11 understand it. Are you asking me did I talk to Bruce  
12 before my deposition was taken on November 2nd about  
13 the fact that my deposition was going to be taken?

14 MR. JIAMPIETRO: That's correct.

15 THE WITNESS: Yes, probably I did.

16 BY MR. JIAMPIETRO:

17 Q What did you discuss?

18 A Probably that, that my deposition was  
19 going to be taken.

20 Q Did you discuss the substance of what you  
21 would testify to?

22 A I didn't know what the substance of the

1 deposition was going to be until after it was taken.  
2 I had some general idea that they probably wanted to  
3 ask me about Whitewater, but I don't know that I had  
4 that even firmly fixed in my mind.

5 Q When did you have these discussions with  
6 Mr. Lindsey or discussion with Mr. Lindsey?

7 A I don't know, sometime before November 2nd  
8 I assume.

9 Q The day before or the week before?

10 A I don't remember.

11 Q Prior to Mr. Lindsey's deposition on  
12 November 3rd, 1995 did you have any discussions with  
13 him about the fact that he was going to be deposed by  
14 the Special Committee?

15 A I don't remember specifically, but I may  
16 have.

17 Q Do you recall having dinner with him on  
18 November 1st, 1995?

19 A Not specifically, but I don't -- I mean if  
20 you've got some indication that we had dinner then.  
21 We had dinner from time to time, and maybe we did. I  
22 would have to check my calendar.

1 MR. JIAMPIETRO: If you could do that,  
2 that would be helpful.

3 THE WITNESS: All right.

4 MR. HADDON: He went off to check his  
5 calendar. I'll let you know when he gets back.

6 (Pause.)

7 THE WITNESS: I do not believe I had  
8 dinner with Mr. Lindsey on November 1st.

9 BY MR. JIAMPIETRO:

10 Q In his deposition on November 3rd, 1995  
11 Mr. Lindsey was asked "Have you spoken to James  
12 Lyons about the fact that you were being deposed here  
13 today? He responded "I think I had dinner with him  
14 two nights ago, and I probably told him. I don't  
15 know if I told him it was today I was being deposed."

16 Does that refresh your memory?

17 A No. My records reflect that on November  
18 1st in the evening I was speaking with Mr Haddon.

19 MR. HADDON: In Denver since I as a matter  
20 of principle don't go to Washington, D.C.

21 THE WITNESS: However, I do believe I had  
22 dinner with Lindsey on Tuesday night, October 31st.

1 MR. JIAMPIETRO: In Denver?

2 THE WITNESS: No, in Washington. I was in  
3 Washington on the 31st and left on the 1st. I am,  
4 like Mr. Haddon, occasionally required to come to  
5 Washington.

6 MR. COLE: I must say I fail to see to  
7 relevance of any of this, if Mr. Lyons and Mr.  
8 Lindsey had dinner together on a particular date. If  
9 he doesn't recall that they discussed anything of  
10 substance about the matters we're investigating, I  
11 just don't see that that has any relevance.

12 THE WITNESS: Well Mrs. Lindsey, according  
13 to my notes, was with us on the night of the 31st,  
14 which further suggests to me it was a social  
15 occasion.

16 BY MR. JIAMPIETRO:

17 In the course of your involvement with  
18 issues relating to Whitewater did you ever come to  
19 meet Mike Berman?

20 A I've met Mike Berman, but I don't know  
21 that it's in the context of Whitewater. I think I  
22 met him during the campaign.

1 Q Do you know who he is?

2 A I know generally who he is.

3 Q Could you tell us, please.

4 MR. COLE: I think the appropriate  
5 question is if he has any recollection of having any  
6 contacts or discussions with Mr. Berman relating to  
7 the matters in Senate Resolution 120. If he doesn't,  
8 I think it's an enormous waste of our time to clutter  
9 up our record with Mr. Lyons' description of how Mr.  
10 Berman is or what he does.

11 THE WITNESS: Well the answer to your  
12 question, Mr. Cole, is no, I don't recall any  
13 discussions with Mr. Berman relative to the substance  
14 of matters encompassed within Senate Resolution 120.

15 MR. COLE: I think that answers the  
16 question.

17 BY MR. JIAMPIETRO:

18 Q In your November 2nd, 1995 deposition with  
19 the Special Committee at page 87 you were asked if  
20 you had ever discussed Whitewater Development  
21 Corporation with Mike Berman, and your response was  
22 "I think I may have." You were then asked "Who is

1 Mike Berman," and your response was "He is a lawyer I  
2 think, but I have no specific recollection of that."

3 All I'm trying to find out is if you have  
4 any knowledge, and given that basis for the  
5 questioning I'm just trying to understand who Mike  
6 Berman is and what his role was with regard to  
7 Whitewater, and I think by understanding what is role  
8 was in the campaign we might have a better  
9 understanding of his involvement in Whitewater.

10 A Well I don't know what his role was during  
11 the campaign. There were literally hundreds, if not  
12 thousands of people who participated in the campaign  
13 as volunteers at one time or another, many of whom  
14 were friends of the Clinton's from one place or  
15 another. I believe Mr. Berman may have been one of  
16 those.

17 I've had a chance here to look at the  
18 questions and answers put to me last November with  
19 regard to this, and I don't think I have anything to  
20 add to what I said in November.

21 Q Could you refer to document Bate stamped  
22 JML 2593.

1 A Yes.

2 Q Let me first ask you are these your notes?

3 A Yes. Well they are transcriptions of my  
4 notes of October 5th, '93, and they indicate with  
5 reference to Mr. Berman that apparently he was going  
6 to have some relationship to transition tax issues.  
7 I have no idea what that means.

8 Q And this doesn't refresh your memory as to  
9 what his role was in the Whitewater investigation?

10 A Well you're assuming it related to  
11 Whitewater, and I don't make that assumption. But  
12 the answer to your question is no, it does not  
13 refresh my recollection.

14 Q The reason I assume it's related to  
15 Whitewater is because at the top of the page of those  
16 notes there is the notation WDC.

17 A I see that.

18 Q And that's why I'm --

19 A No, I understand, but I don't know that to  
20 be the case. In any event, the reference to Mr.  
21 Berman in this particular document did not refresh my  
22 recollection.



1 MR. JIAMPIETRO: Off the record.

2 (Discussion off the record.)

3 MR. JIAMPIETRO: Back on the record.

4 BY MR. JIAMPIETRO:

5 Q Could you refer to document Bate stamped  
6 JML 2592.

7 A I have it.

8 Q Could you please describe the first entry  
9 on the page.

10 A Are you referring to the typewritten  
11 version or the handwritten version?

12 Q The handwritten version.

13 A You mean the reference to Sam Heuer?

14 Q That is correct. Perhaps it would help if  
15 you just read the notation for us.

16 A Well out in the margin it says: Blair.  
17 Then it says: Sam Heuer (Isakoff).

18 Then there appear to be two bullets under  
19 that heading. The first one says: International  
20 Paper, McDougal put in certain company, co, dash dash  
21 put in WDC by mistake. Transferred is what that  
22 arrow would mean to Great Southern Land Company.

1 The second bullet says: Jack files during  
2 trial, GSL files, Great Southern Land not made  
3 payments, foreclosed, purchased Phoenix Mortgage,  
4 Lasater principal.

5 Q The notation to Blair, does that indicate  
6 you would have discussed these issues with Mr. Blair?

7 A Yes. I think that would indicate he  
8 called me, or I called him, one or the other, and  
9 that this was information he was giving to me that he  
10 had obtained from Sam Heuer, who is Jim McDougal's  
11 lawyer, which McDougal had obtained in turn from Mike  
12 Isakoff, who was then a reporter with the Washington  
13 Post. I think that's what it means. My recollection  
14 is the Post either broke this story or had followed  
15 it up after someone else had picked it up in the fall  
16 of 1993.

17 Q Could you also read for us the last entry  
18 on that page.

19 A Picking it up it says: Nolo bene with  
20 exclamation point. Clinton is not involved in above.

21 Q Actually, no. I'm talking about the very  
22 last entry on the page which begins RTC

1 investigating.

2 A RTC investigating possible target,  
3 indicted for everything the government can think of.

4 Q Can you tell us the meaning of that  
5 notation.

6 A As best I recall, that was again Heuer  
7 talking with Blair and Blair in turn passing it along  
8 to me, and that's a reference to McDougal, that the  
9 RTC was investing Heuer's client, McDougal, that he  
10 was a possible target, and I believe Blair was  
11 telling me Heuer expected that McDougal would be  
12 indicated for everything the government could think  
13 of.

14 MR. JIAMPIETRO: Off the record for a  
15 moment.

16 (Discussion off the record.)

17 MR. JIAMPIETRO: Back on the record.  
18 Could you please refer to JML 2593.

19 THE WITNESS: All right.

20 MR. JIAMPIETRO: The first two entries on  
21 that page, could you just read those to us.

22 THE WITNESS: Yes. They say: RTC

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1 criminal referrals dash last two months. KC arrow  
2 DOJ. Madison money. Clinton fundraiser spring 1985.  
3 Then John Tisdale and his phone number.

4 BY MR. JIAMPIETRO:

5 Q Do you know the source of that  
6 information?

7 A Yes. This is all laid out in my  
8 deposition from last November. We went over all  
9 this.

10 Q It's not clear, and if you could just  
11 answer this one question, I think then we're going to  
12 move on to issues that were not addressed in your  
13 last deposition. So if you could just answer for us  
14 the source of this particular information. It's the  
15 last question we have with regard to these documents.

16 A I believe this information came from  
17 either Jim Blair or Loretta Lynch to me after one or  
18 both of them had received a phone call from Jeff  
19 Gerth who had indicated he had a source inside the  
20 RTC leaking information to him.

21 MR. JIAMPIETRO: Off the record.

22 (Discussion off the record.)

1 MR. JIAMPIETRO: Back on the record.

2 I would like to move on now, Mr. Lyons, to  
3 a review of your notes that were produced by you to  
4 the Committee regarding Whitewater.

5 Could you please describe the process by  
6 which you collected these notes.

7 THE WITNESS: Yes. These notes represent  
8 notes which I took from time to time as necessary, in  
9 my judgment, that is to deal with various issues that  
10 arose during the early part of 1992 basically through  
11 March of 1992 in connection with the Clinton for  
12 President Campaign. They cover a variety of subjects  
13 including, but not limited to, the work which I did  
14 in connection with the Whitewater real estate  
15 development investment.

16 In response to the first subpoena which I  
17 received for these notes from the Department of  
18 Justice in January of 1994 I went through all of my  
19 campaign files in order to find documents which were  
20 responsive to the subpoena given me by the Department  
21 of Justice, including my notes. I had to look in a  
22 variety of different places and from those places

1 pulled together these notes which I then review for  
2 two things, responsiveness and privilege.

3 The redactions that appear in these notes  
4 relate to materials which are either not responsive  
5 to the ongoing investigation of Whitewater  
6 Development Corporation, meaning they relate to other  
7 subject matters, or they are matters which are and  
8 continue to be privileged as within the  
9 attorney/client privilege.

10 MR. COLE: And, Mr. Lyons, am I  
11 understanding you correctly that those are not  
12 mutually exclusive categories? In other words, a  
13 particular redacted entry might be both outside the  
14 scope of this inquiry and also privileged?

15 THE WITNESS: Yes, that's true.

16 MR. JIAMPIETRO: And the fact that the  
17 Clinton's have waived their attorney/client privilege  
18 with regard to all Whitewater issues during the  
19 Clinton campaign does not affect in any way your  
20 analysis of the privilege issue?

21 THE WITNESS: No, because you'll recall  
22 that in response to the first appointment of a

1 Special Counsel in the Department of Justice the  
2 Clinton's at that time waived any attorney/client  
3 privilege associated with the Whitewater matter, and  
4 that's a waiver that has been in effect since January  
5 of 1994, and, as you know, they have later and  
6 subsequently expanded the scope of the waiver.

7 BY MR. JIAMPIETRO:

8 Q The first page of your notes reads, and  
9 correct me if I read this wrong: Wednesday, February  
10 19th, 2 p.m.; is that correct?

11 A Yes.

12 Q Is this the first set of notes that you  
13 took on the Whitewater issue?

14 A It would be impossible for me to answer  
15 that. What I am able to tell you by looking at JML  
16 107 is that this is the first and earliest reference  
17 I could find to anything related to Whitewater. As  
18 you can see there, the reference is to McDougal loan.

19 Q Could you just read that entry on the  
20 first page for me.

21 A Yes. It says: McDougal loan, and then  
22 there are five bullets underneath it. It says:

1 Chairman of the Board, Madison Bank & Trust  
2 represented by Rosh dash Hillary.

3 Out in the margin it says: 1976 property  
4 loan.

5 The next bullet says: 1981 dash '82  
6 investment quote/unquote Whitewater.

7 Next it says: Indicted and acquitted.  
8 That's a reference to McDougal.

9 Then it says: Bill Kennedy, Web Hubbell.

10 And I believe this is probably the first I  
11 ever heard of Mr. McDougal or anything called  
12 Whitewater, but I'm not absolutely certain of that.  
13 It's the first time it appears in the notes that I  
14 kept from the 1992 campaign.

15 Q Could you please describe the  
16 circumstances surrounding this particular entry in  
17 your notes.

18 A Counsel, I have absolutely no  
19 recollection.

20 Q The reference to a 1976 property loan,  
21 could you tell us the meaning of that notation?

22 A No, I really can't. I assume that whoever



1 I was talking to or however I was getting this  
2 information was telling me it related back to a time  
3 in 1976 which is wrong. It's 1978, as we know, and  
4 related to money borrowed to acquire property.

5 Q Could you please explain the reference to  
6 Bill Kennedy and Web Hubbell.

7 A I assume that's just sources of  
8 information.

9 Q Could you turn to JML 108.

10 A Sure.

11 Q Could you read the only entry which isn't  
12 redacted on that page for us.

13 A Yes. That appears to have been done on  
14 the 22nd of February. It appears to be a  
15 conversation I had with Susan Thomas. It says:  
16 Whitewater dash McDougal. Clinton quote carried  
17 interest unquote, 90/10, \$9,000 interest paid. HC  
18 arranged for tax returns through 1989. BC/HC  
19 returns, 1980 dash 1990 released by 1990 campaign,  
20 New York Times. Out in the margin it says: Real  
21 estate lawyer accountant reconstruct.

22 And I believe these are the highlights of

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1 a conversation I had with Susan which covered these  
2 points.

3 Q Could you explain the 90/10 reference and  
4 the Clinton carried interest.

5 A Well there was some suggestion, as I  
6 recall, at the time that the Clinton's were getting  
7 something for nothing, that they were carried in this  
8 investment having no risk and no money invested into  
9 it, and the degree of their carry was 90/10. It  
10 turned out to be wrong, but I think that was the  
11 information at the time, or at least the allegation  
12 made by Mr. Gerth and the New York Times at the time.

13 Q Turn to JML 109 please.

14 A Or it even could have been Susan's  
15 interpretation or misinterpretation. I mean I was  
16 just again taking down what I thought were the  
17 highlights that were important to me anyway at the  
18 time relative to what she knew about it and what she  
19 was telling me about it.

20 109?

21 Q Yes. It appears that a portion of the  
22 page has been redacted.

1 A It has. There are probably -- well there  
2 are other items on the page that don't relate to  
3 Whitewater.

4 Q There are two items listed on the page  
5 that are not redacted, Nos. 3 and 4, and for the sake  
6 of efficiency here I'll just read the portion that  
7 I'm interested in and if you would correct me I would  
8 appreciate it.

9 Point 3 states in part: Tax returns,  
10 interest problems, e.g. lot 13. Is that correct?

11 A No.

12 Q Okay. Please read that for us.

13 A It says: Tax returns, investments;  
14 problems, e.g., lot 13.

15 Q Could you please describe what that refers  
16 to.

17 A Yes. I think we wanted to look, or I  
18 wanted to look or understand what the tax returns  
19 reflected concerning their investments.

20 Q Could you briefly describe the context of  
21 these notes and how they were prepared. Were they  
22 prepare, for instance, during a telephone

1 conversation?

2 A I don't know. They may have been notes to  
3 myself as to things that I needed to do on various  
4 subjects. This was a period of time when I was  
5 basically commuting back and forth to Little Rock and  
6 would try and get as organized as I could before I  
7 went down there to use my time as efficiently as  
8 possible.

9 Q There is no date which appears on JML 109.  
10 Were these related to entries on JML 108?

11 A I don't know. They may be.

12 Q You can't date these particular notes; is  
13 that correct?

14 A That's correct.

15 Q If you would turn to JML 111.

16 A All right. These two pages of notes, let  
17 me just tell you what they are.

18 Q Before you go on, it appears that there  
19 are four pages of notes that might be consecutively  
20 numbered; is that correct?

21 A Yes, that is correct. There are four  
22 pages of notes here, and what these represent is my

1 review of the Clinton tax returns for the indicated  
2 years, and what basically I have written down are  
3 those things that were of interest to me in  
4 connection with these tax returns.

5 Q Would you turn to JML 112, and if you  
6 would just read the entry for 1984, I believe just  
7 the first five lines and then the notations in the  
8 margin if they're relevant to that entry.

9 A It says: 1984 Yoly Redden, CPA, tax  
10 preparer.

11 Under that it says: Interest deduction:  
12 Security Bank (Paragould?) \$2,811. Note: No  
13 interest deduction for -- I can't make that out.

14 Q Does that refer to SBP which might refer  
15 to Security Bank if Paragould?

16 A It appears to, yes, thank you. No  
17 interest deduction for SBP in 1983.

18 The marginalia says: First year shown.  
19 What that refers to is that interest deduction of  
20 \$2,811 I believe. Original note date 9/30 per  
21 extension agreement.

22 MR. JIAMPIETRO: Off the record.

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1 (Discussion off the record.)

2 MR. JIAMPIETRO: Back on the record.

3 On JML 113 the last three years referred  
4 to on this page of notes, and you don't have to read  
5 them, I think I can make them out for myself, but if  
6 you would take a moment to review them because I have  
7 some questions regarding them.

8 THE WITNESS: Okay, go ahead.

9 BY MR. JIAMPIETRO:

10 Q The entries for 1986 and '87 appear to  
11 refer to interest paid to Security Bank of Paragould  
12 in those years; is that correct?

13 A Yes.

14 Q \$1,636 in 1986.

15 A That's what it appears to say.

16 Q And then \$2,561 in 1987.

17 A That's right.

18 Q In your review of the income tax returns  
19 for the Clinton's is this when you first had a  
20 question as to whether or not there may have been a  
21 double counting of interest during this period of  
22 time?

1 A No, I don't think I was far enough into it  
2 yet to get to that. I think this simply reflects  
3 what was recorded on their tax returns, and it was  
4 later when we got the conclusion that there may have  
5 been an error made inadvertently.

6 Q If you could refer to the chronology that  
7 we pulled previously, JML 068 through 075.

8 A All right.

9 Q If you would look at the entry on the last  
10 page of the chronology, page 8, which is JML 075,  
11 dated 11/25/88.

12 A Yes.

13 Q That entry appears to state that lot 13  
14 was sold for \$27,500 for a gain of \$1,742. As you  
15 appear to have correctly noted in your notes at the  
16 bottom of JML 113 referring to the 1988 tax returns  
17 for the Clinton's and more specifically Schedule D  
18 referring to lot 13 and the sale of lot 13 could you  
19 please read the last notation under 1988 for us.

20 A Yes. It says: Gain, 1,640.

21 Q Is there any explanation for this  
22 difference that you're aware of?

1 A Well it would seem to me, although I am  
2 not certain, that the gain for tax purposes computed  
3 by Yoly Redden might be entirely different than the  
4 gain computed for economic purposes by Earl Stafford  
5 in Ozark Realty, whoever he is and however he arrived  
6 at his number.

7 MR. COLE: We're talking about a  
8 difference of a little over \$100 here; is that right,  
9 Mr. Jiampietro?

10 MR. JIAMPIETRO: That is correct.

11 THE WITNESS: It's \$102.

12 MR. COLE: I said a little over.

13 THE WITNESS: Yea, big money.

14 MR. COLE: That's my point.

15 MR. JIAMPIETRO: This gain seems to have  
16 been important enough for it to be corrected in the  
17 report prepared at the auspices of Mr. Kendall  
18 recently though.

19 MR. COLE: That's the sad state of affairs  
20 that we live in in political Washington today. Yes,  
21 I recognize that.

22 MR. JIAMPIETRO: If you could turn to JML



1 115.

2 THE WITNESS: All right.

3 MR. JIAMPIETRO: If you could read for us  
4 the first entry on this page, please and the margin  
5 notes referring to lot 13.

6 THE WITNESS: Okay. The first bullet  
7 says: 12/16/80 HC, \$30,000 loan, one year 20  
8 percent. Bank Kingston. Security interest "house  
9 dash three acres." One year mortgage recorded  
10 1/12/81.

11 And the note says: BC loses election  
12 11/80.

13 MR. JIAMPIETRO: Before you go on just let  
14 me ask you a question there.

15 THE WITNESS: Sure.

16 BY MR. JIAMPIETRO:

17 Q Is there any relationship, or did you ever  
18 come to learn of any relationship between Mr.  
19 Clinton's losing the election in November of 1980 and  
20 the lot 13 transaction which appears to have begun in  
21 December of 1980?

22 A Yes. He was about to move out of the

1 Governor's mansion and needed a place to live. There  
2 was some thought, as I recollect, that they might  
3 live in that part of Arkansas or have a second home  
4 at Whitewater, or a retirement home, something like  
5 that.

6 Q If you could read the second entry, the  
7 second bullet point.

8 A 12/9/81 HC and BC grantors. Hellman  
9 Logan, \$27,500. \$6,000 cash. Note for balance. No  
10 form 4797 in '81.

11 The marginalia says: "Demo lot" Chris and  
12 Rosalee Wade.

13 Q These notes appear to be just your attempt  
14 to reconstruct the lot 13 facts; is that correct?

15 A Yes, I think that's right. It was an  
16 early effort on my part to try and get it all  
17 organized in my head.

18 Q The date of these notes is February 26,  
19 1992; is that correct?

20 A Yes.

21 Q There is a notation at the top of the page  
22 right under the date. Could you read that for us.

1 A Yes. It says: BC:.

2 Q Could you describe that notation or what  
3 the meaning of that notation is for us.

4 A Yes. I had a conversation with Governor  
5 Clinton.

6 Q Did these notes result from that  
7 conversation?

8 A No -- well, yes, in part they did. I mean  
9 we talked about, as you can see from the notes, a  
10 variety of subjects, including that subject which has  
11 been redacted because it's either not responsive,  
12 privileged or both.

13 Q And you would have discussed these lot 13  
14 issues with him as well?

15 A Yes. Remember, we were in the middle of a  
16 primary campaign and he was traveling almost non-stop  
17 seven days a week, and you had to catch him when you  
18 could and cover with him what items you needed to  
19 cover as best you could.

20 Q Did you rely this information to you or  
21 did he rely it to you?

22 A I think I was telling him this is what I

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1 was able to determine and was trying to find out what  
2 additional information he could share with me which,  
3 as you can see, was not much.

4 Now if you go to the next page, and let me  
5 get a little bit ahead of you maybe, you will see  
6 that there are some names written. See in the lower-  
7 left-hand corner of JML 116.

8 Q Yes.

9 A Bruce, do you see that reference?

10 Q I do.

11 A Do you see the reference about an inch or  
12 two inches above it, Sam Bratton?

13 Q I do.

14 A Do you see the reference above that, bank  
15 records Whitewater?

16 Q I do.

17 A These were things he was telling me I  
18 should look at or people I should talk to to get more  
19 information as I remember it.

20 Q Staying on JML 116, could you read the  
21 notation which is under the first slash on the page.

22 A Remember Marlin Jackson?

1 Q Yes.

2 A It says: Remember Marlin Jackson,  
3 President, Worthlan Bank, Conway remembers  
4 everything, or remember everything.

5 Q Could you describe for us the meaning of  
6 this notation.

7 A I think what this means is that the  
8 Governor was telling me that Marlin Jackson, at least  
9 insofar as some of the bank relationships here, had a  
10 better memory than he did on these subjects and that  
11 I should talk to him, or we should talk to him.

12 Q Did you talk to Marlin Jackson?

13 A I didn't personally, but I believe Loretta  
14 did on a number of occasions.

15 Q Was any information conveyed to you from  
16 these conversations?

17 A Yes, but I can't remember specifically.  
18 Whatever source he or others identified to us we  
19 tried to exhaust to see what they remembered and what  
20 documents they had and could share with us quickly.

21 Q Could you read the next notation on the  
22 page.

1 A Yes. Steve Smith part owner Bank of  
2 Kingston, professor, I think that's political science  
3 at the University of Arkansas.

4 Smith was, as indicated, a part owner of  
5 the bank at Kingston, and I think we later learned he  
6 bought it with McDougal, and he was a friend of the  
7 Governor's who was then I think, as indicated,  
8 teaching political science at the University of  
9 Arkansas. I don't know what he does now.

10 Q Then down near the bottom of the page,  
11 just to the right of the notation Bruce, could you  
12 read that entry.

13 A Yes. It says: Marlin Jackson slash SB  
14 correspondence not released to New York Times or us.  
15 WW exclamation, refer to G-o, George I assume.

16 Q Could you just explain this notation to  
17 us.

18 A Well the second one I can. George  
19 Stephanopoulos was then serving as the Press Officer,  
20 if you will, Press Secretary for the campaign, and we  
21 needed to get a Whitewater explanation as soon as we  
22 could to George, or at least I assume that's what it

1 means.

2 Marlin Jackson slash SB correspondence not  
3 released to New York Times or us, I don't know what  
4 that refers to. It could have been Security Bank,  
5 but I don't know that, and it was obviously something  
6 I decided I needed to talk with Bruce about because  
7 that's why I wrote his name down.

8 Q Do you recall ever reviewing any  
9 correspondence by Marlin Jackson to the Security Bank  
10 of Paragould with regard to the Clinton's loans that  
11 were taken out from Security Bank?

12 A I seem to recall some correspondence about  
13 an extension for a loan that was either in default,  
14 past due or about to go past due. I think we looked  
15 at that earlier as a matter of fact.

16 Q We did. The notation to Bruce, who would  
17 that refer to?

18 A Lindsey, Bruce Lindsey.

19 Q Would you have discussed these matters  
20 with Mr. Linsey?

21 A Well if I wrote it I assume I did.

22 Q Once again, this page, could you just

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1 describe for me which notes would have been related  
2 back to your telephone conversation with Governor  
3 Clinton.

4 A Oh, it wasn't a telephone conversation.

5 Q Okay, I'm sorry.

6 A We were in the back seat of a car.

7 Q Where were you exactly?

8 A In the back seat of a car headed to an  
9 airport. It seems that's how we spent most of 1992.

10 Q Would the notes on JML 115 through 117  
11 have been the results of this conversation with  
12 Governor Clinton?

13 A No. I think those were probably notes I  
14 made before I had a chance to talk to him and they  
15 were things I wanted to ask him about because they  
16 appear to be neater.

17 Q Let me just clarify though for the record  
18 because you just noted that on page JML 116 that  
19 President Clinton would have named some of these  
20 people as persons you should contact to get some  
21 information, and I'm just wondering whether or not  
22 the notes in part were taken during the course of the



1 meeting, all of the notes were taken during the  
2 meeting, or some were prepared before. Could you  
3 just describe that for us.

4 A I believe that they were taken in the  
5 course of my conversation with him at that time, and  
6 the note to Bruce was either a note to myself or a  
7 follow-up conversation I had at the same time or  
8 shortly thereafter with Bruce Lindsey. That's my  
9 best recollection.

10 Q I don't know if I have any questions on  
11 these notations. I just have difficulty reading  
12 them. So if you could just read through the  
13 notations at the bottom of JML 115 for me.

14 A Beginning where, McDougal authorized?

15 Q That's it.

16 A It says: McDougal authorized to pay off  
17 campaign debt, WW check paid down Clinton loan at  
18 Security Bank originated 8/30/83.

19 And in the margin there is a reference to  
20 a \$15- to \$20 thousand fundraiser.

21 Q Could you explain the meaning of this  
22 notation to us.

1 A I can't be sure, but I believe that this  
2 is a reference to McDougal agreeing to help pay off  
3 some Clinton gubernatorial campaign debt by means of  
4 a fundraiser that raised or was hopeful to raise that  
5 kind of money.

6 Then I think the second subject refers to  
7 a Whitewater check that was used to pay down a loan  
8 at Security Bank.

9 Again I was trying to understand early on  
10 in this process who Jim McDougal was and how he fit  
11 into this.

12 Q Would this have been something that  
13 Governor Clinton told you, or would this have been  
14 something that you learned from another source and  
15 questioned him about?

16 A I don't know. I can't tell by looking at  
17 this.

18 MR. JIAMPIETRO: Off the record.

19 (Discussion off the record.)

20 MR. JIAMPIETRO: Back on the record.

21 If you would refer to JML 117, and if you  
22 could just try to read that notation for us, please.

1 THE WITNESS: It says: McDougal,  
2 Bradford, President WD Arkansas, alcoholic. I don't  
3 know what the next entry is. Met 1968 Fulbright  
4 office, Arkansas, brilliant, manic depressive,  
5 lithium, prosak. Susan, student, very close, staff  
6 aide, and I don't know what -- oh, something  
7 development. I don't know what it says,  
8 unfortunately. Then it says: Bought Bank of  
9 Kingston, West Little Rock Real Estate, Stephen Smith  
10 bought Madison Guaranty.

11 Out in the margin it says: John Speed,  
12 Steve Smith, ex-wife married G. Speed. I believe  
13 this is background information on McDougal that  
14 someone gave me.

15 MR. JIAMPIETRO: Just for clarity now I  
16 think that you stated earlier that JML 115 through  
17 117 would have been notes that had been taken by you  
18 during your meeting with Governor Clinton, and I just  
19 want to be perfectly clear about this for the record.

20 MR. HADDON: Well I think that does not  
21 accurately characterize his testimony.

22 MR. JIAMPIETRO: Then please --

1 THE WITNESS: Well 117 may have been part  
2 of that discussion with either Governor Clinton or  
3 Bruce Lindsey or somebody else who was giving me  
4 information, background information generally about  
5 Jim McDougal.

6 BY MR. JIAMPIETRO:

7 Q Just so we're perfectly clear though, JML  
8 115 through 116 would have been notes that you took  
9 during your meeting with Governor Clinton; is that  
10 correct?

11 A No. 115 and 116 are notes I prepared in  
12 advance of my meeting with the Governor, notes I took  
13 during my meeting with the Governor and notes which  
14 may have also included discussions with Bruce Lindsey  
15 or others as they continued over onto 117.

16 Q Thank you. If you could turn to JML 119.

17 A Okay.

18 Q If you could briefly summarize and  
19 describe the circumstances of these notes it would be  
20 helpful.

21 A Well these appear to be telephone  
22 conversations with a variety of people, including Jim

1 Boyer, perhaps Jim Hamilton and Loretta and Eli Segal  
2 about the matters that are indicated, one of which  
3 appears to be the use of a woman named Sandra Jonagan  
4 as a forensic accountant to assist us in doing a  
5 financial reconstruction.

6 Q Was Ms. Jonagan ever retained?

7 A No. We couldn't afford her.

8 Q If you could just read through the rest of  
9 that page for me, please.

10 A Well I was having a conversation it  
11 appears with Blair either about Hamilton -- I mean I  
12 just don't know who the conversation was with as  
13 indicated.

14 Q If you could just discuss the items listed  
15 on the page for us.

16 A Item one says: Ethics opinion, Governor  
17 DBW individual also owned S&L regulated by State.  
18 DBW I think means doing business with individual who  
19 also owns S&L regulated by State.

20 Two says: Corporate tax returns,  
21 shareholder dividend question mark. McDougal  
22 attorney.

1 Point 3 says: Meeting with McDougal and  
2 attorney Thursday p.m. FEC letter dash Wilhelm Sy  
3 question mark. Rose documents, seven file boxes  
4 reviewed. Attorney/client privilege slash  
5 confidentiality, and then there are a list of names,  
6 Saul Benjamin, Bill Hottis, Richard Menz, Loretta,  
7 Nancy, John Hart, and Gary Ginsberg. Then it says:  
8 Attorneys. And in the left-hand marginalia it says:  
9 W. Hubbell.

10 Q Now just a couple of questions on those  
11 notations. The reference to seven file boxes  
12 reviewed, can you tell us what that notation means?

13 A Yes. I believe that is the amount of file  
14 boxes somebody was telling me, probably Hamilton or  
15 Loretta, but maybe Blair, too, that were being  
16 reviewed in connection with the Whitewater matter.  
17 They were being reviewed by this sort of team of  
18 individuals, these four listed lawyers and these  
19 three campaign volunteers who were assisting them and  
20 acting under their supervision and direction. I  
21 believed that that satisfied and preserved the  
22 attorney/client privilege and confidentiality, and I

1 think Web Hubbell concurred in my view.

2 Q If you would refer to JML 120.

3 A Okay.

4 Q Are these your notations for March 11th,  
5 1992?

6 A They appear to be.

7 Q I don't want you to read through them, but  
8 if you could just briefly summarize the circumstances  
9 surrounding these notations.

10 A Well again this is a laundry list, as it  
11 says, of items I prepared I think for myself of  
12 things that needed to be done in connection with a  
13 number of items for which I was responsible during  
14 the campaign.

15 Q If you would just drop down to the last  
16 two entries and just read those to us.

17 A It says: Loretta, staff person dash  
18 clerical, file cabinet. The word under her name is  
19 resources. Then it says: BC negative research.

20 Q Moving on to JML 121 through 122.

21 A Yes.

22 EVENING SESSION (6:00 p.m.)

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1 Q Actually if you would look at JML 121  
2 through 124 I believe those might be consecutively  
3 numbered pages.

4 A They appear to be.

5 Q If you would just take a moment to review  
6 these notes. I don't have a lot of questions on  
7 them, but if you could describe for us the  
8 circumstances of them and briefly summarize them it  
9 would be helpful.

10 A Well in general terms, although I can't be  
11 exactly positive, I mean this is over four years ago  
12 now, I believe this is an outline I prepared for  
13 myself on March the 13th of how I wanted to approach  
14 this Whitewater real estate issue in order to answer  
15 the questions that had been raised, and I think if  
16 you read through them you'll see that's basically  
17 what I did.

18 Q If you would just turn to JML 122 and  
19 refer to note 6.

20 A It says: No evidence any funds from  
21 Madison Guaranty to WWDC. And then under the bullets  
22 there are a number entities listed. Then it says:



1 No subsidiaries directly related to S&L. Out in the  
2 margin it says: McDougal's attorney no charges  
3 filed.

4 Q Could you list the entities listed under  
5 there for me.

6 A Yes. Madison Marketing, FF, Inc., which I  
7 think is Flowerwood Farms, Pembroke, McDougal &  
8 Associates, Tucker, Smith & McDougal.

9 Q And then just the line under that.

10 A It says: Not subsidiaries or directly  
11 related to S&L.

12 Q If you would just refer back to JML 2674  
13 for me. It's a document you pulled earlier that I  
14 asked you about.

15 A What is it again?

16 Q 2674.

17 A I have it.

18 Q I asked you some questions regarding this  
19 document earlier, and I don't think we were able to  
20 ascertain whether or not it was your handwriting or  
21 your notation.

22 A No, I said it wasn't.

1 Q Now looking at this FF, Inc. and the FF  
2 Inc. on this notation, is it still clear to you, and  
3 I know this is a long time ago, is it still clear to  
4 you that this 2674 wasn't a notation by you?

5 A Yes. I do not believe that to be my  
6 handwriting.

7 Q Was this an issue that you wanted to look  
8 into or that you had already looked into, point 6?

9 A I don't remember specifically. I do and  
10 can say that we were able to conclude that there  
11 wasn't any evidence of funds going from Madison  
12 Guaranty to Whitewater Development Corporation.  
13 There was, however, evidence of funds going from  
14 Madison Marketing, Flowerwood, Pembroke, et cetera,  
15 into Whitewater at various times and in various ways.  
16 But so far as we were able to determine, none of  
17 those entities were subsidiaries or directly related  
18 to the S&L.

19 We were trying to determine if there had  
20 been money which went from a failed federally insured  
21 financial institution directly into Whitewater  
22 Development Corporation, which (a) if that had

1 happened and (b) if it did, whether or not any such  
2 loans or extensions of credit had gone unpaid.  
3 Q If you could just refer to JML 123 and  
4 read the last line on that page for me.  
5 A It says: Field Watson. Is that where you  
6 mean?  
7 Q Yes.  
8 A No honorarium for BC in 1987 greater than  
9 \$1,500 question mark. It was a question I had for  
10 Field Watson, who was attorney to the Governor at the  
11 time.  
12 Q On JML 124.  
13 A All right.  
14 Q The middle of the page if you could just  
15 read those two notations that are listed and describe  
16 the circumstances concerning those notations.  
17 A Well which two notations?  
18 MR. HADDON: The ones that say Loretta?  
19 MR. JIAMPIETRO: That is correct.  
20 THE WITNESS: Okay. Under loose ends, is  
21 that what you mean?  
22 MR. JIAMPIETRO: That's correct.

1 THE WITNESS: All right. It says: Loose  
2 ends, and then No. 1 is BC check No. 121, 2/2/82,  
3 \$20,744.65. No. 2 was 10/5/83 letter Ron Proctor and  
4 J. B. McDougal, WWCD loans question mark, No. 10295  
5 payoff, \$19,593.83 principal, \$5,558.02 interest.  
6 BY MR. JIAMPIETRO:  
7 Q Do you know what that notation No. 2 is  
8 referring to?  
9 A Not specifically. It appears to me that I  
10 was asking Loretta to run this down.  
11 Q Then if you would just read items 3 and 4.  
12 A Item 3 says: Bank of Jonesboro, 3/1/92,  
13 WWDC note question mark. Item 4 says: Cherrydale  
14 Bank.  
15 Q These were loose ends that you were trying  
16 to tie up or that needed to be tied up during the  
17 course of the review of Whitewater; is that correct?  
18 A Yes, I think so.  
19 Q On page JML 125 there is a reference to a  
20 person at the bottom of the page, the last notation  
21 on the page. Could you just read that person to us.  
22 A Yes, John Klusartz, K-l-u-s-a-r-t-z at

1 Swidler & Berlin, and those are his phone numbers.

2 Q What was his role in the investigation?

3 A He was a partner of Jim Hamilton's at  
4 Swidler & Berlin, and he was helping Hamilton and us  
5 I think with some -- I think he's a tax lawyer, but  
6 I'm not sure of that. He may also be a disclosure,  
7 as I call it a disclosure lawyer like Hamilton.

8 MR. COLE: We won't let Mr. Hamilton know  
9 that you limited his expertise in that manner.

10 THE WITNESS: Well even if you did, he  
11 wouldn't accept it, and I certainly mean no  
12 disrespect to him. Among his many expertise I  
13 recognized his considerable experience in Federal  
14 candidate disclosure and ethics law. I've even  
15 looked at his book.

16 MR. COLE: So have I.

17 MR. JIAMPIETRO: If you would look at JML  
18 127 through 130.

19 THE WITNESS: Yes.

20 MR. JIAMPIETRO: Could you just describe  
21 for us, and these pages appear to be consecutively  
22 numbered 1 through 4, and if you could just briefly

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1 describe the circumstances surrounding the  
2 preparation of these notes and the date because my  
3 copy has the date cut off for us.

4 THE WITNESS: The date is March 16th,  
5 1992. I was preparing an outline for a letter or  
6 memorandum which I was going to send to Governor and  
7 Mrs. Clinton regarding what we had done, what we  
8 looked at, what our purposes were, what our source  
9 materials were, what our results were, particularly  
10 in a highlighted fashion, and what my recommendations  
11 were.

12 By the way, do you see half way in the  
13 middle of 127 the name John Klusartz?

14 MR. JIAMPIETRO: I do.

15 THE WITNESS: He's identified as a tax  
16 partner. So I assume that's what he is.

17 BY MR. JIAMPIETRO:

18 Q Would Mr. Klusartz have been involved in  
19 advising you on the various tax issues?

20 A Not really. He talked to Hamilton, and I  
21 think may have had a conversation, perhaps one or  
22 more conversations with Pat.

1 Q Did you ever have any conversations with  
2 Mr. Klusartz?

3 A Not out of the context of discussions with  
4 either Pat or Hamilton, and I'm not sure I have any  
5 specific recollection of talking to him at all.

6 Q If you would just read the first two lines  
7 on page JML 127 for us.

8 A Under perform financial review, or above  
9 that?

10 Q Above that.

11 A It says: Personal legal stationery,  
12 outline letter slash memo BC and HRC.

13 Q Did you ever prepare this memorandum or  
14 letter?

15 A Not in this form I did not. The contents  
16 of this outline later found their way into the cover  
17 letter which I wrote and were covered, at least to my  
18 satisfaction, in the report Patten, McCarthy wrote.

19 Q If you would read under the purposes  
20 section of these notes on page JML 127.

21 A Sure. Purpose, twofold. Assure full and  
22 complete disclosure of all relevant financial matters

1 as required by Federal and State election law. Two,  
2 reconstruct from currently available corporate and  
3 personal records transactional history of real estate  
4 venture known as WDC. Actually it's a little  
5 truncated there. It says: Transactional history and  
6 financial condition of real estate venture known as  
7 WWDC.

8 Q On page JML 128, the first notation on the  
9 page describes the source materials to be used; is  
10 that correct?

11 A Yes.

12 Q And there are three people listed down the  
13 left-hand margin?

14 A Right.

15 Q Yoly Redden, Hamilton, and the third  
16 person, could you just read that for us.

17 A Field Watson.

18 Q Who was Mr. Field Watson?

19 A He was the Governor's lawyer, counsel to  
20 the Office of the Governor in Arkansas.

21 Q And then further down the page you have a  
22 notation interview and then a colon, and then you



1 list --

2 A McDougal and attorney Sam Heuer, Chris  
3 Wade, Charles James, BC and HRC and Yoly Redden.

4 Q Did you interview these people?

5 A You mean personally?

6 Q Personally.

7 A Personally I interviewed Governor and Mrs.  
8 Clinton. I did not personally interview Yoly Redden,  
9 although, as I described earlier, I talked to her. I  
10 did not personally interview Chris Wade or Charles  
11 James, and we did not personally interview McDougal  
12 because he was represented by counsel and insisted on  
13 having us deal with his counsel, Sam Heuer, which we  
14 did.

15 Q Did you interview Governor and Mrs.  
16 Clinton at some point after these notes were taken on  
17 March 16th, 1992 and prior to the release of the  
18 summary report on March 23rd, 1992?

19 A I may very well have had a conversation  
20 with them about this. I recall preparing these notes  
21 either in advance of a trip to Chicago or on my way  
22 to Chicago where the campaign was then located for

1 the Illinois and Michigan primaries, and I was with  
2 them at that time and may very well have talked to  
3 them about this.

4 Q But you don't have any specific  
5 recollection as to interviewing them prior to the  
6 release of the summary report?

7 A You mean about the contents of this note,  
8 or these notes?

9 Q In order to conduct your investigation in  
10 Whitewater.

11 A Well, counsel, I've already described the  
12 interviews I did with them.

13 Q As long as that refers to this interview,  
14 that's fine.

15 A Well, wait a minute. I want to make sure  
16 the record is clear here. If you're asking me about  
17 what's contained in these four pages of notes, which  
18 are JML 127 through 130, I am telling you that I may  
19 very well have, in addition to the other contact and  
20 discussions I've described, had further discussions  
21 with one or both of the Clinton's about the subject  
22 of these notes. I simply don't recall.

1 Q The last two pages of notes, Bate stamped  
2 JML 129 through 130, appear to describe a number of  
3 categories of items. 129 appears to describe  
4 highlights of results; is that correct?

5 A Yes. That's what it says.

6 Q We're on the last two pages of these  
7 notes, and if you could just read for me these two  
8 pages I would appreciate it.

9 MR. HADDON: 130 and 131?

10 MR. JIAMPIETRO: 129 through 130. That's  
11 all we have.

12 THE WITNESS: Okay. It says: Highlights  
13 of results. Point 1, State financial disclosures  
14 require some correction dash necessary or required.

15 BY MR. JIAMPIETRO:

16 Q Before you do on let me ask you, was any  
17 action taken in response to your concern raised in  
18 this point?

19 MR. COLE: He has already testified to  
20 that, hasn't he?

21 MR. HADDON: Yes, he has.

22 THE WITNESS: Yes, I thought I had.

1 MR. COLE: In great detail as I recall, or  
2 in as great a detail as he can presently recall.

3 MR. JIAMPIETRO: I'm not sure he recalled  
4 whether or not the State financial disclosure forms  
5 had been --

6 MR. COLE: Do you think he remembers  
7 something now that he didn't remember two hours ago?

8 MR. JIAMPIETRO: He has gone through a  
9 number of his notes, and I'm just trying to refresh  
10 his memory, and I'm asking him whether or not this  
11 refreshes his memory at all.

12 THE WITNESS: I believe that we would have  
13 deferred to Field Watson on that question as to  
14 whether a disclosure at that point would have been  
15 necessary or required. That was a matter of State  
16 law for which he was in the best position to make a  
17 judgment as the Governor's lawyer.

18 MR. JIAMPIETRO: Point 2 is relating to  
19 Federal disclosures which we've discussed before.

20 THE WITNESS: Yes, and I believe that was  
21 done again with the advice of Mr. Hamilton.

22 MR. JIAMPIETRO: Point 3 appears to refer

1 to findings regarding Whitewater. Could you just  
2 read through those for us.

3 THE WITNESS: Yes. It says: Re WWDC dash  
4 findings. (a) BC and HC at risk at all times, 1978  
5 to present; And up in the right-hand corner there it  
6 says: No carried interest or unearned benefit.  
7 Under that it says: Outstanding debt, personally  
8 liable. The marginalia says: WWDC never showed  
9 profit question mark. That was something I wanted to  
10 confirm and did.

11 Subheading (b) says: BC and HC contribute  
12 cash and service corporate debt, 1978 to present  
13 amounts.

14 (c): BC and HC received no distributions  
15 or income, or not distributions and income.

16 (d) says: McDougal's contribute money,  
17 but also substantial distributions. Unexplained I  
18 think is what that says.

19 (e) says: No notes, no evidence of any  
20 dealings, funds from Madison Guaranty L&S to support  
21 or benefit WWDC.

22 And the left-hand marginalia says:

1 Footnote, litigation may be only recourse.  
2 Corporation accounting, no confidence. Answer,  
3 unexplained transactions, which means you may have to  
4 sue them.

5 MR. JIAMPIETRO: Sue the McDougal's?

6 THE WITNESS: Yes.

7 (f): WWDC currently negative net worth.  
8 Your 50 percent has book value of negative dollars.

9 We didn't know the amount of that yet  
10 obviously, and if you come back to subpoint (b) on  
11 the preceding page, JML 129, that's a reference to  
12 the amounts under the contribution of cash and  
13 service corporate debt, and that needed to be  
14 included.

15 Then point No. 4 says: Federal income tax  
16 returns dash 1984 (earlier), 1988 in error, interest  
17 deductions taken. No evidence of fraud or  
18 "negligence." Simple mistake. Recomputation,  
19 require additional tax at prevailing rates, \$4,364.47  
20 before interest.

21 Then it says: Recommend, and there are  
22 three points there.

1 1. Amend State and Federal disclosure  
2 forms to reflect WWDC.

3 2. Given current public position,  
4 consider voluntary repayment of Federal income tax.

5 3. Engage counsel independent from  
6 campaign and Governor's office to ensure compliance  
7 in future.

8 Available to discuss at your convenience.

9 BY MR. JIAMPIETRO:

10 Q With regard to point 3 of your  
11 recommendations regarding the engagement of an  
12 independent counsel of sorts, do you know if that  
13 ever occurred?

14 A I don't. In terms of the campaign itself,  
15 as you may know, once an initial disclosure is made  
16 by the candidate basically at least for that purpose  
17 to satisfy the Federal law there are ongoing  
18 requirements of course with regard to financial  
19 matters and contributions, and I was not referring to  
20 that.

21 MR. JIAMPIETRO: Thank you very much.  
22 That's it for me.

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1 THE WITNESS: All right. You're welcome.

2 MR. COLE: Well it's now almost 6:30 in  
3 the evening, and although I have a number of areas I  
4 would like to cover with Mr. Lyons, I don't think  
5 it's fair to keep him on the telephone any longer  
6 than necessary. So I'm going to try and limit my  
7 questions to 5 or 10 minutes, Mr. Lyons, and wrap  
8 this up.

9 THE WITNESS: All right. I appreciate  
10 that.

#### 11 EXAMINATION

12 BY MR. COLE:

13 Q I would like to focus back on a few points  
14 relating to your work in February and March of 1992.  
15 You've testified that you had interviews and  
16 discussions with both Mr. and Mrs. Clinton at that  
17 time relating to Whitewater Development Corporation;  
18 is that correct?

19 A Yes.

20 Q What impression did you obtain from those  
21 interviews and discussions about the Clinton's degree  
22 of knowledge and information concerning Whitewater?



1 A Well my impression was that Governor  
2 Clinton remembered very little about the details and  
3 had a general recollection at best about this  
4 particular investment. It was also my impression and  
5 recollection that Mrs. Clinton had been more involved  
6 than he, at least in terms of trying to track the  
7 investment, understand what was going on, making sure  
8 that the loans on which they were obligated got paid  
9 and that things like tax returns and franchise taxes  
10 and so forth got paid if they due and filed on time.

11 Q I would like to focus with you on two or  
12 three points that have been the subject of  
13 considerable recent attention in connection with the  
14 trial that took place in Little Rock and otherwise,  
15 and in that regard I think I would like to get your  
16 best recollection on these points because in a sense  
17 you were the first investigator to look at  
18 Whitewater, at least to the extent that you were  
19 acting in that capacity when you spoke with the  
20 Clinton's in early 1992.

21 At the time of your discussions with the  
22 Clinton's in 1992 did they indicate to you that they

1 had any knowledge of a transaction that Whitewater  
2 engaged in involving International Paper Corporation?

3 A No, they didn't know about it.

4 Q Did you ask them questions about  
5 Whitewater that would have elicited that information  
6 or would have been intended to elicit that  
7 information if they had had it at that time?

8 A Well, yes, in two respects. First of all,  
9 I interviewed them and, secondly, we reviewed  
10 carefully the available documents that evidenced the  
11 transactions, the loans, the advances, the inflow and  
12 outflow of money, if you will, into Whitewater  
13 Development Corporation, none of which revealed or  
14 even hinted at the purchase of an 810 parcel of  
15 property located some 250 miles to the south of where  
16 this investment was to have been conducted.

17 We later learned of course through  
18 testimony and public statements made by Mr. McDougal  
19 that he kept this investment, or this transaction  
20 rather from the Clinton's, did not run it through the  
21 books of Whitewater, and had it on the books or took  
22 title only in the name of Whitewater for a few months

1 and then later transferred it out to Great Southern  
2 Land Company, and I think Mr. McDougal said and  
3 admitted candidly both publicly and in testimony that  
4 he withheld this from the Clinton's and never told  
5 them about it.

6 Q And you learned nothing to the contrary in  
7 your discussions with the Clinton's in 1992?

8 A No, I did not.

9 Q And in particular did you learn from the  
10 Clinton's that any funds from a company called Master  
11 Marketing had been used by James or Susan McDougal to  
12 pay for Whitewater related expenses?

13 A No. We knew, as I pointed out to Mr.  
14 Jiampietro earlier, that there was an advance made  
15 from a McDougal source called Madison Marketing that  
16 was made in fiscal year 1985 that was repaid somehow  
17 in some way in 1986, but that's all we knew.

18 Q Did either Mr. or Mrs. Clinton in  
19 connection with Madison Marketing, Master Marketing  
20 or anything else ever mention to you anything about a  
21 loan from David Hale or a company that David Hale  
22 controlled?

1 A No. The first time I heard David Hale's  
2 name was in the summer of 1993 when he was about to  
3 be, or at least it was reported in the press was  
4 about to be and then was in fact indicted for his  
5 mismanagement of an SPIC known as Capital Services  
6 Management Corporation or something like that.

7 Q If I recall your prior testimony  
8 correctly, you indicated that you did come to know  
9 during this time period that the Rose Law Firm and  
10 Mrs. Clinton had provide some legal services to  
11 Madison Guaranty Savings and Loan in the past?

12 A Yes.

13 Q And in the course of your discussions with  
14 the Clinton's concerning Whitewater did you ask them  
15 whether any funds from Madison Guaranty Savings &  
16 Loan had ever been used to pay Whitewater related  
17 expenses?

18 A Well I don't know that I asked that  
19 specific question. We found no evidence in the  
20 corporate documents or in their personal financial  
21 information which we used that that was the case.

22 Q And while you may not have asked the

1 specific question you were aware of Mr. McDougal's  
2 connection with Madison Guaranty Savings & Loan I  
3 take it?

4 A Yes, I certainly was.

5 Q So this was something that you  
6 specifically looked at both in your review of the  
7 documents and in your discussions with the Clinton's  
8 and other persons?

9 A Well if you go back to my notes, Mr. Cole,  
10 JML 122, on the 13th of March of 1992 at point 6, you  
11 will see, as I discussed with Mr. Jiampietro, that  
12 there was no evidence that there were any funds from  
13 Madison Guaranty to Whitewater Development  
14 Corporation.

15 Q I understand that, and the point that I'm  
16 focusing on is that in the thousands and thousands of  
17 person hours that have been expended since 1992 and  
18 the millions and millions of dollars investigating  
19 Whitewater Development Corporation and Madison  
20 Guaranty Savings & Loan and particularly the work  
21 done by the Pillsbury, Madison & Sutro law firm it  
22 now appears that indirectly perhaps at least some

1 funds were funnelled from Mr. McDougal through  
2 companies he controlled to Whitewater, but that was  
3 something that you found no evidence of in the two  
4 and a half weeks that you were able to review this in  
5 1992?

6 A Well, no, and the reason I think is fairly  
7 self-evident. Pillsbury, Madison & Sutro spent, as I  
8 understand it, about two years and over \$4 million to  
9 do a similar investigation to reach basically the  
10 same conclusion. However, as a contractor with the  
11 Federal Government, the RTC and the FDIC, Pillsbury,  
12 Madison & Sutro had full and complete access to  
13 internal bank records which we could not have had  
14 access to and certainly did not have access to.

15 So, for example, they would have been able  
16 to determine, as did apparently the Federal Bureau of  
17 Investigation, that money from Madison Guaranty found  
18 its way into Flowerwood Farms and through Flowerwood  
19 Farms to Whitewater Development Corporation. There  
20 is no way we had any information or capability to  
21 reach back past Flowerwood Farms as Pillsbury did.

22 Q That's helpful, and I'm trying to be as

1 brief as I can be and not belabor the obvious points,  
2 but I think there are a couple of points that you  
3 just made that are worth following up on and getting  
4 on the record.

5 At the time that you conducted the review  
6 that you with the assistance of Mr. Patten and his  
7 firm undertook in early 1992 you had specific  
8 objectives in mind when you undertook that review in  
9 terms of in part responding to press inquiries; is  
10 that correct?

11 A Yes. The press inquiries frankly about  
12 this had given rise to a number of questions that not  
13 only the press wanted answers to, but I think the  
14 Clinton's wanted answered as well.

15 Q And those were the questions that you  
16 testified to earlier of whether or not the Clinton's  
17 were at risk, whether or not they made or lost money  
18 in Whitewater and how much money they made or lost?

19 A Right.

20 Q And you had a limited amount of time and  
21 you has a limited set of questions that you were  
22 trying to answer. So you neither had the time nor

1 the resources to conduct an exhaustive review of the  
2 kind that Pillsbury, Madison & Sutro and the  
3 Independent Counsel have since undertaken; is that  
4 correct?

5 A That's correct, but I'm perfectly willing  
6 to put the work product of Patten, McCarthy &  
7 Associates and myself up against that of Pillsbury,  
8 Madison & Sutro.

9 Q As it happens that's my next question.  
10 Have you had an opportunity to review the reports  
11 that have now been made public that were released  
12 Pillsbury, Madison & Sutro?

13 A Yes, I have.

14 Q Very briefly I would like for you to, if  
15 you can, describe the differences between what I  
16 would refer to as your amended report, which would  
17 take into account the roughly \$20,000 correction that  
18 you made when you obtained additional information  
19 from the President through his counsel, and that is  
20 what I'm referring to when I say your amended report,  
21 to the conclusions that Pillsbury, Madison & Sutro  
22 reached in the two multi-page reports on Whitewater



1 Development Corporation that they released in April  
2 and December of 1995 in terms of the findings.

3 A Well let me see if I can answer it this  
4 way. First of all, in terms of the financial  
5 conclusions I believe, if my memory serves me,  
6 Pillsbury, Madison & Sutro and we are about \$4,000  
7 apart plus or minus a few hundred dollars. In other  
8 words, we concluded after we amended our report based  
9 on the supplemental recollection of the President  
10 that the Clinton's over the period of 1978 basically  
11 through 1991 had lost about \$46,000. I believe  
12 Pillsbury, if I remember this correctly, concludes  
13 that they lost slightly less than that.

14 We both agree, Pillsbury and us, that the  
15 Clinton's were passive and not active managers of  
16 this investment. We both agree that there is no  
17 evidence to suggest that money went directly from  
18 Madison Guaranty to Whitewater for the benefit of the  
19 Clinton's with the Clinton's knowledge and consent.  
20 We both agree based information from Mr. McDougal  
21 that the International Paper transaction took place  
22 without their knowledge and was in fact deliberately

1 withheld from them.

2 And I believe we have generally agreed  
3 that there were some tax adjustments which should  
4 have been made and for which the Clinton's have made  
5 a voluntary adjustment and payment to the United  
6 States Treasury and others, even though the Statute  
7 of Limitations had run and they have no obligation to  
8 do so.

9 Now where we don't agree, or where we are  
10 not on the same page is the amount of time it took  
11 them, the amount of time they had, the access to  
12 information and records which they had and what they  
13 got paid, and I am willing to stipulate that the  
14 score there is Pillsbury, Madison & Sutro \$4 million  
15 and Lyons zero.

16 Q And in addition to that they had a number  
17 of other advantages like the ability to subpoena  
18 witnesses and compel testimony and the production of  
19 documents that you did not have.

20 A That's true. You will recall I make the  
21 suggestion in my notes here that the only real way  
22 for us to get access to that is probably bring a

1 litigation which of course in the course of a  
2 campaign, particularly one for President of the  
3 United States, is a little impractical, but  
4 nevertheless was I felt my duty as a lawyer to point  
5 out an option they clearly had.

6 MR. COLE: Well I could go on longer, but  
7 I don't think at this late hour on a speaker  
8 telephone deposition that it's necessary. I did want  
9 to get that point and that comparison out on our  
10 record because I think it's important.

11 I don't have anything further.

12 MR. JIAMPIETRO: I just have one follow-  
13 up, Mr. Lyons, and I'll be done.

14 EXAMINATION

15 BY MR. JIAMPIETRO:

16 Q You briefly testified regarding when you  
17 learned that Mr. Hale was making allegations with  
18 regard to the President, and I just wanted to point  
19 out that he was indicted on September 23rd, '93, and  
20 I wanted to ask you with that date in mind does it  
21 help you narrow when you first learned that Mr. Hale  
22 was making these allegations with regard to the

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1 President?

2 A There were reports in the press I believe  
3 before he was indicted, and I don't recall if it was  
4 in the local press or the wire services that I seem  
5 to recall he was making these allegations against  
6 then Governor and now President Clinton.

7 MR. JIAMPIETRO: That's it. Thank you.

8 THE WITNESS: All right. Thank you.

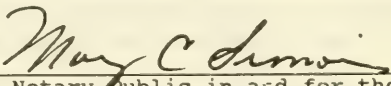
9 MR. COLE: Thank you very much.

10 (Whereupon, at 6:42 p.m., the telephonic  
11 deposition of James Lyons concluded.)  
12  
13

14 -----  
15 JAMES M. LYONS  
16  
17  
18  
19  
20  
21  
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, MARY C. SIMONS, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

SEPTEMBER 1, 1999

## ERRATA SHEET

Deposition of James M. Lyons (In re: Whitewater)  
June 5, 1996

Page	Line	Change from	Change to	Reason
9	21	Clinton's	Clintons	EIT
15	1,15	Clinton's	Clintons	EIT <sup>1</sup>
17	16	Clinton's	Clintons	EIT
20	3,4	Clinton's	Clintons	EIT
21	12	report	reports	EIT
23	8,10	Clinton's	Clintons	EIT
24	13	as released	was released	EIT
24	15,22	Clinton's	Clintons	EIT
25	06	Clinton's	Clintons	EIT
26	21	would reviewed	would have reviewed	EIT
31	04	Clinton's	Clintons	EIT
32	02	Clinton's	Clintons	EIT
35	03	Clinton's	Clintons	EIT
37	1,11	Clinton's	Clintons	EIT
39	3,6,14	Clinton's	Clintons	EIT
40	6	Clinton's	Clintons	EIT
40	8	McDougal's	McDougals	EIT
43	7	Clinton's	Clintons	EIT
47	2	Clinton's	Clintons	EIT
50	3	Clinton's	Clintons	EIT
55	3	Clinton's	Clintons	EIT
55	3	McDougal's	McDougals	EIT
60	13	Clinton's	Clintons	EIT

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<sup>1</sup>Error in transcription



Page	Line	Change from	Change to	Reason
61	18	Clinton's	Clintons	EIT
66	8	Clinton's	Clintons	EIT
67	15	Clinton's	Clintons	EIT
78	10	joint	join	EIT
85	20	Clinton's	Clintons	EIT
86	5,17	Clinton's	Clintons	EIT
87	6	Clinton's	Clintons	EIT
88	15	Loans in	Loans and	EIT
88	16	McDougal's	McDougals	EIT
88	16	Clinton's	Clintons	EIT
91	1	2926 to 2045	2026 to 2045	typo
94	10	Polasky	Pulaski	spelling
97	8	Clinton's	Clintons	EIT
97	11	presumable	presumably	typo
97	14	McDougal's	McDougals	EIT
98	1	Jiffer	Giuffra	spelling
104	6	Clinton's	Clintons	EIT
104	14	owned	owed	EIT
106	19	Clinton's	Clintons	EIT
108	14	Clinton's	Clintons'	EIT
109	1	McDougal's	McDougals	EIT
117	20	Clinton's	Clintons'	EIT
118	8,18	Clinton's	Clintons	EIT
122	9	Clinton's	Clintons'	EIT
125	17	Linsey	Lindsey	spelling
126	3	Cantor	Kantor	spelling

Page	Line	Change from	Change to	Reason
126	10	Clinton's	Clintons	EIT
145	14	Clinton's	Clintons	EIT
147	17	Isakoff	Ishikoff	spelling
148	12	Isakoff	Ishikoff	spelling
152	1	review	reviewed	EIT
152	17	Clinton's	Clintons	EIT
153	2	Clinton's	Clintons	EIT
154	2	Rosh	Rose	EIT
155	15	Thomas	Thomases	spelling
156	6	Clinton's	Clintons	EIT
160	19	Clinton's	Clintons	EIT
161	17	Clinton's	Clintons	EIT
167	3	Worthlan	Worthen	EIT
169	10	Clinton's	Clintons'	EIT
173	5	prosak	prozac	spelling
176	2	sy	sign	EIT
181	5	Watson	Wasson	spelling
181	10	Watson	Wasson	spelling
184	22	Pat.	Patten.	EIT
185	4	Pat	Patten	EIT
186	4	known sa	known as	typo
186	17,18	Watson	Wasson	spelling
188	21	Clinton's	Clintons	EIT
189	16	do on	go on	EIT
190	13	Watson	Wasson	spelling
191	16	McDougal's	McDougals	EIT

Page	Line	Change from	Change to	Reason
191	20	L&S	S&L	typo?
192	5	McDougal's	McDougals	EIT
194	21	Clinton's	Clintons	EIT
195	10	they due	they were due	EIT
195	20,22	Clinton's	Clintons	EIT
196	20	Clinton's	Clintons	EIT
197	4,7,10	Clinton's	Clintons	EIT
198	5	SPIC	SBIC	EIT
198	14	Clinton's	Clintons	EIT
199	7	Clinton's	Clintons	EIT
201	14,16	Clinton's	Clintons	EIT
203	10,15	Clinton's	Clintons	EIT
203	19	Clinton's	Clintons	EIT
204	4	Clinton's	Clintons	EIT

**DEPOSITION OF SANDRA J. HATCH  
IN RE: S. RES. 120**

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**THURSDAY, JUNE 6, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of SANDRA J. HATCH, called for examination pursuant to notice of deposition, at 2:15 p.m. in Room 640-A of the Hart Senate Office Building, before JANE W. BEACH, a Notary Public within and for the District of Columbia, when were present:

VIET D. DINH, Esq.  
Majority Associate Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

RONALD M. CLARK, Esq.  
The Rose Law Firm  
120 East Fourth Street  
Little Rock, Arkansas 72201

ALDEN L. ATKINS, Esq.  
Vinson & Elkins, L.L.P.  
The Willard Office Building  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1008  
On behalf of the Deponent.



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1 PROCEEDINGS  
2 COMMITTEE CONFIDENTIAL

3 (2:15 p.m.)

4 MR. ATKINS: Alden Atkins.

5 MR. DINH: Mr. Atkins, this is Viet Dinh  
6 again.

7 MR. ATKINS: Yes.

8 MR. DINH: I am here with Glen Ivey on the  
9 Minority side, and we are ready to proceed whenever  
10 you are.

11 MR. ATKINS: Okay, let me plug them in.  
12 Hang on.

13 MR. DINH: Okay.

14 (Pause.)

15 MR. ATKINS: This is Alden. Viet, are you  
16 there?

17 MR. DINH: Yes, I am here.

18 MR. ATKINS: Ron, are you there?

19 MR. CLARK: Here.

20 MR. ATKINS: And Sandra Hatch, you are  
21 with Ron Clark? Right?

22 MS. HATCH: Right.

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4

1 MR. DINH: Just so we are on the same  
2 page, Glen and I are here in Room 640-A of the Senate  
3 Hart Building.

4 Mr. Atkins, can you identify your  
5 location?

6 MR. ATKINS: Yes. I am at Vinson & Elkins  
7 Offices in Washington, D.C., at 1455 Pennsylvania  
8 Avenue, Northwest.

9 MR. DINH: And Mr. Clark?

10 MR. CLARK: We are in the Offices of the  
11 Rose Law Firm, 120 East Fourth Street, Little Rock,  
12 Arkansas.

13 MR. DINH: Thank you, very much.

14 Good afternoon, Ms. Hatch.

15 MS. HATCH: Hello.

16 MR. DINH: I am going to go through some  
17 preliminaries and then I will ask the Court Reporter  
18 to swear you in and we will get started.

19 Okay?

20 MS. HATCH: Okay.

21 MR. DINH: Great.

22 This deposition is conducted pursuant to

1 Senate Resolution 120. The Resolution establishes  
2 the Special Committee to Investigate Whitewater  
3 Development Corporation and Related Matters.

4 My name is Viet Dinh and I am with the  
5 Majority Staff.

6 With me is Mr. Glen Ivey, who is Minority  
7 Counsel to the Committee.

8 MR. IVEY: How are you today?

9 MS. HATCH: Fine.

10 MR. IVEY: Good.

11 MR. DINH: Section 1(b)(i) of Resolution  
12 120 authorizes investigation and public hearings into  
13 "whether improper conduct occurred regarding the way  
14 in which White House officials handled documents in  
15 the office of White House Deputy Counsel Vincent  
16 Foster following his death."

17 Section 1(b)(iii)(A) of Resolution 120  
18 authorizes investigation and public hearings into  
19 "the operations, solvency, and regulation of Madison  
20 Guaranty Savings & Loan Association and any  
21 subsidiary, affiliate, or other entity owned or  
22 controlled by Madison Guaranty Savings & Loan

1 Association."

2 Section 1(b)(iii)(C) of Resolution 120  
3 authorizes investigation and public hearings into  
4 "the policies and practices of the RTC and the  
5 Federal Banking Agencies regarding the legal  
6 representation of such agencies with respect to  
7 Madison Guaranty Savings & Loan Association."

8 I anticipate, Ms. Hatch, that these will  
9 be the subject of today's deposition. The testimony  
10 will be taken under oath, and a stenographer will  
11 prepare a record of questions and answers.

12 This deposition is made in advance of  
13 public hearings. We have not decided whether we will  
14 conduct such public hearings or who we will call at  
15 such public hearings, but if you are among the  
16 witnesses at any eventual public hearings we will  
17 notify you and counsel in advance.

18 The transcript of this deposition will be  
19 treated as Committee confidential until the  
20 commencement of any public hearings. At that time,  
21 it may be made public in whole or in part.

22 Prior to the hearings, you will receive a

1 letter from the Committee telling you the procedures  
2 to review the transcript of your deposition and make  
3 note of any corrections for transcription on an  
4 errata sheet.

5 That is for the limited purpose of review  
6 and correction, and the information is not to be  
7 disclosed for any other reason.

8 If you are called to testify at public  
9 hearings, you will be provided with a copy of your  
10 deposition transcript four days in advance of your  
11 testimony, again for the limited purpose of preparing  
12 yourself for testimony at the hearings.

13 You may be represented by counsel, and we  
14 have it on the record, but, counsel, if you could  
15 identify yourselves again so we have it on the  
16 transcript I would appreciate it.

17 MR. ATKINS: Yes. I am Alden Atkins of  
18 Vinson & Elkins.

19 MR. CLARK: I am Ron Clark at Rose Law  
20 Firm.

21 MR. DINH: Pursuant to the procedures set  
22 forth in Senate Resolution 120, objections as to the

1 form of the questions will be noted for the record.  
2 There are two grounds upon which counsel may object  
3 and give you, Ms. Hatch, an instruction not to  
4 answer. That is, privilege and scope.

5 The procedures in Senate Resolution 120  
6 provides that the Committee Chairman, Senator  
7 D'Amato, will rule ultimately on any objections where  
8 the witness refuses to answer a question.

9 At this time, I will ask the Court  
10 Reporter to swear in the Witness.

11 THE REPORTER: Would you raise your right  
12 hand, please, Ms. Hatch.

13 MS. HATCH: Okay.

14 (Witness sworn.)

15 Whereupon,

16 SANDRA J. HATCH  
17 was called to give a telephonic deposition in the  
18 above-entitled matter and, having been first duly  
19 sworn, by telephone, by the Notary Public located in  
20 Room 640-A of the Hart Senate Office Building, was  
21 examined and testified as follows:

22 EXAMINATION



1 BY MR. DINH:

2 Q Ms. Hatch, for the record --

3 Ms. Hatch, can you get a little bit closer  
4 to the speaker? The Court Report is having a little  
5 bit of a problem hearing you.

6 A Okay.

7 Is this better?

8 Q Yes, it is.

9 Thank you, very much.

10 Ms. Hatch, for the record, can you state  
11 your name, please?

12 A My name is Sandra J. Hatch.

13

14 Q Ms. Hatch, from the notice of deposition  
15 that you received from this Committee, have you had  
16 any conversations with anyone other than your  
17 attorneys and family members about the substance or  
18 subject matter that you've been asked to testify  
19 about?

20 A No.

21 Q Without telling me what you were asked or  
22 what you said, can you tell me whether you've been

---

10

1 interviewed or questioned under oath by any  
2 investigative agency or individual about the  
3 substance or subject matter that you've been asked to  
4 testify about?

5 MR. ATKINS: Under oath?

6 MR. DINH: Under oath, or interviewed.

7 THE WITNESS: I was interviewed by the  
8 FBI.

9 BY MR. DINH: (Resuming)

10 Q When was that, Ms. Hatch?

11 A I believe about a week ago, I guess.

12 MR. CLARK: That was by an attorney in the  
13 Office of the Independent Counsel and an FBI agent.

14 MR. DINH: Okay. Thank you.

15 MR. IVEY: Could she speak up, please.

16 MR. DINH: I will have to ask you, Ms.  
17 Hatch, to speak a little bit louder. We are having  
18 problems hearing you at this end.

19 THE WITNESS: Okay.

20 BY MR. DINH: (Resuming)

21 Q Thank you, very much.

22 Other than the attorney and the FBI

1 working for the Office of Independent Counsel, have  
2 you been interviewed or questioned by anyone else  
3 regarding these subject matters?

4 A No, I have not.

5 Q Can you give me a brief rundown of your  
6 educational and professional background?

7 A I graduated from Simmet Hills High School  
8 in 1983.

9 I worked for the National Bank of  
10 Arkansas.

11 After that I went to Werthen Bank. I  
12 worked there -- I can't remember every detail of every  
13 job right now, but I've worked -- I came to Rose Law  
14 Firm in 1990.

15 Q What is your position at the Rose Law  
16 Firm?

17 A My position is Project Assistant in  
18 Litigation.

19 Q Has that been your position there since  
20 1990?

21 A No. I was hired as a file clerk in  
22 litigation.

1 Q How long were you a file clerk in the  
2 Litigation Department?

3 A From 1990 until the first part of 1995.

4 Q And then you were promoted to Project  
5 Assistant?

6 A Right.

7 Q And I take it you are currently at the  
8 Rose Law Firm also?

9 A Yes.

10 Q Did you have occasion to work with Hillary  
11 Clinton while you were at the Rose Law Firm?

12 A I worked very little with Mrs. Clinton.

13 Q Did you have an occasion to work with the  
14 late Vincent Foster?

15 A Yes.

16 Q More so than you worked with Mrs. Clinton,  
17 I take it?

18 A Yes.

19 Q Did you have occasion to work with Mr.  
20 Hubbell?

21 A Yes.

22 Q With whom did you work more closely with,

1 Mr. Foster or Mr. Hubbell?

2 A I believe it was a Mr. Foster.

3 Q And I take it at this time you were in the  
4 position of the file clerk in the litigation  
5 department?

6 A Yes.

7 Q And what were your general duties as the  
8 file clerk --

9 MR. ATKINS: I'm sorry, let me interject.  
10 I think you're using the words "the file clerk," and  
11 I think she was "a" file clerk.

12 MR. DINH: Okay. Thank you very much. I  
13 was going to ask that as a follow-up question.

14 BY MR. DINH: (Resuming)

15 Q What were your duties as a file clerk?

16 A I filed for the attorneys I had been  
17 assigned to.

18 I also made copies, picked up FAXes, ran  
19 some gofer errands; pretty much just whatever general  
20 duties needed to be done.

21 Q And were you assigned to Mr. Foster?

22 A Yes.

1 Q For what period of time?

2 A I was assigned to Mr. Foster from 1991  
3 until he left in 1992 -- I'm sorry, 1990 until 1992.

4 Q And I take it this will be in late 1992?

5 A Right.

6 When Mr. Foster left the firm.

7 Q Do you recall approximately when that was,  
8 what month it was?

9 MR. CLARK: Vince actually left in January  
10 of 1993, like January 19th.

11 MR. DINH: Right after the Inauguration,  
12 then?

13 MR. CLARK: Well, the day before the  
14 Inauguration.

15 BY MR. DINH: (Resuming)

16 Q Were you assigned to Mr. Hubbell at any  
17 time?

18 A I believe in the early part of my  
19 employment I was Mr. Hubbell's file clerk for a very  
20 short period of time.

21 Q Approximately how many months?

22 A My guess would be, just a couple of

1 months.

2 Q And at what point in 1990 did you begin to  
3 be assigned to Mr. Foster?

4 A I was assigned to Mr. Foster the first day  
5 I was employed here in November of 1990.

6 Q Were you assigned to multiple attorneys?

7 A Yes.

8 Q Besides Mr. Foster, and for a brief period  
9 of time, Mr. Hubbell, how many other attorneys were  
10 you assigned to?

11 A It could have been up to 8 to 10  
12 attorneys.

13 Q Were you at any time assigned to Mr.  
14 William Kennedy?

15 A No.

16 Q Did you have occasion to work with Mr.  
17 Kennedy at the Rose Law Firm?

18 A I don't remember ever working with  
19 Mr. Kennedy.

20 Q You said part of your duties were to file  
21 materials for the attorneys you were assigned to.  
22 What kind of materials would that be?

---

1 A Respondent for a pleading, research papers  
2 that have been done.

3 That's about it.

4 Q Do they include filing, or drafting, or in  
5 any way preparing time sheets or billing records?

6 A That they had prepared?

7 Q No, no.

8 Do your duties include preparing, or  
9 helping to prepare, or typing, or filing time sheets  
10 or billing records?

11 A No.

12 Q Who would do that generally in the firm?

13 A Usually that would be the secretary to the  
14 attorney.

15 Q And in the carrying out of your duties as  
16 a file clerk, do you from time to time enlist the  
17 help of others?

18 A Yes.

19 Sometimes.

20 Q Now would these be other file clerks?  
21 Or did you have people working under you?

22 A No.



1 It would either be -- it would usually be  
2 other file clerks.

3 Q As a general matter, how do the tasks get  
4 assigned to you? Do the attorneys assign to you --  
5 come to you directly and give you a task to perform?  
6 File this; or copy this?

7 A Either the attorney for the secretary.

8 Q The secretary of the attorney?

9 A Right.

10 Q They would not have to go through a  
11 supervisor or a coordinator of any type in your  
12 department?

13 A At one point I had somewhat of a  
14 supervisor.

15 She was a secretary in litigation. If it  
16 was a very large project, they might go through her,  
17 but usually they came directly to me.

18 Q And at what point were you supervised by  
19 this secretary?

20 A From my hire date until -- I believe until  
21 1995 when I was moved to be a project assistance.

22 Q And what was her name?

---

1 A Joyce McKinnon.

2 Q Would you spell "McKinnon" for us?

3 A M-C -- K-I-N-N-O-N.

4 Q Do you have any assistants who work under  
5 you?

6 A No, I do not.

7 Q I meant as a file clerk.

8 A Oh, no.

9 No.

10 Q Do you generally know the subject matter  
11 that pertain to the tasks or duties that the  
12 attorneys ask you to perform?

13 And by "subject matter," I mean the  
14 general case, or the general client, and the like.

15 A Yes, I would usually know the client and  
16 the matter involved.

17 Q Did there come a time during your tenure  
18 as a file clerk with the Rose Law Firm that you  
19 performed tasks relating to Madison Guaranty Savings  
20 & Loan Association?

21 A I don't remember handling anything for  
22 that.

1 Q (Pause.)

2 Do you know who who James McDougal is?

3 A I have heard his name.

4 Q Have you seen him? Have you seen his  
5 picture?

6 A In the newspaper, yes.

7 Q Have you never seen him at the Rose Law  
8 Firm.

9 A I don't remember ever seeing him.

10 Q And have you seen Susan McDougal's  
11 picture?

12 A Yes.

13 Q Had you ever seen her at the Rose Law  
14 Firm?

15 A I don't remember ever seeing Mr. or Mrs.  
16 McDougal.

17 Q Did there come a time during the time you  
18 were assigned to Mr. Foster that anyone asked you to  
19 photocopy or otherwise handle or perform tasks  
20 related to some computer-printed records measuring  
21 approximately 11 x 17 inches relating to the firm's  
22 billings to Madison Guaranty Savings & Loan

1 Association?

2 A I don't remember.

3 Q Do you remember handling anything that  
4 approximately fits that description -- and omit the  
5 second part of my question regarding Madison.

6 Do you recall ever being asked to copy,  
7 handle, or otherwise perform any tasks with a sheaf  
8 of records that are computer-generated on 11 x 17  
9 paper.

10 A Yes.

11 Q Is that a frequent occurrence in your  
12 daily routine?

13 A I would not call it "frequent."  
14 "Occasional, maybe."

15 Q Do you recall Mr. Foster ever asking you  
16 to handle such records?

17 A I can't recall a specific incident, no.

18 Q Do you recall Mr. Foster's secretary  
19 asking you to handle or copy such records?

20 A I can't recall a specific incident.

21 Q Do you recall generally whether Mr. Foster  
22 or his secretary ever asked you to handle or copy

1 such records.

2 A I believe I do remember, you know,  
3 occasionally copying something that size.

4 MR. IVEY: Just so I am clear, when you  
5 say "such records" you are referring to computer  
6 records generally, not specific billing records?

7 MR. DINH: No, no. I am referring to  
8 records, computer-generated records measuring 11 x 17  
9 on a printout.

10 MR. IVEY: Okay.

11 BY MR. DINH: (Resuming)

12 Q Was that your understanding of "such  
13 records" in my question, Ms. Hatch?

14 A Right; that you were referring to just  
15 computer printout-sized documents.

16 Q Yes.

17 A Okay.

18 Q And by "computer print-out size," I mean  
19 11 x 17, the big size.

20 Can you tell me, if you can recall,  
21 approximately how many times Mr. Foster or his  
22 secretaries asked you to handle such records?

---

22

1 A I have no idea.

2 Q Do you recall an approximate time frame  
3 that Mr. Foster or his secretary asked you to handle  
4 such records?

5 A No, I don't.

6 Q You said "occasionally."

7 Was there a particular -- during the period  
8 of the three years when you were assigned to Mr.  
9 Foster, was there a period that he asked -- that you  
10 recall Mr. Foster or his secretary asking you to  
11 handle such records? By that, I mean if it happened  
12 more in 1991, or more in 1993, or more in November of  
13 1992, whatever?

14 A I don't remember.

15 Q Now when I asked the question "up to this  
16 point" with respect to Mr. Foster or his secretary,  
17 do you recall whether it was Mr. Foster or his  
18 secretary who asked you to handle these records on  
19 the occasions that you do recall?

20 A Generally I would get any copy projects  
21 from the secretary to the attorney.

22 Q Can you tell me who Mr. Foster's secretary

1 was in 1992?

2 A Lorraine Cline.

3 Q Could you spell the last name, please?

4 A C-L-I-N-E.

5 Q And do you recall Ms. Cline asking you to  
6 copy computer-generated 11 x 17 records --

7 A I don't remember a specific incident.

8 Q Do you recall Mr. Foster asking you to  
9 handle such records sometime in 1992?

10 A I don't remember.

11 Q But either Ms. Cline or Mr. Foster could  
12 have asked you to handle such records in 1992?

13 Am I correct in that?

14 A It is possible.

15 Q Would that be consistent with one of the  
16 occasions that you recall generally them asking you  
17 to handle such records?

18 A It's possible.

19 Q Let me direct your attention now more  
20 narrowly to a time frame in February or March of  
21 1992.

22 A Okay.

1 Q And just to put it in the proper context,  
2 February or March of 1992 was the primary season of  
3 the Presidential election.

4 Do you recall generally that time period?

5 A Yes.

6 Q If I can ask you to turn the clock back,  
7 or turn your mental videotape back in time, do you  
8 recall in the period of February or March 1992  
9 whether Mr. Foster or Ms. Cline asked you to handle,  
10 photocopy, or otherwise perform tasks related to or  
11 involving computer-generated 11 x 17 records?

12 A I don't remember.

13 Q Do you recall during this period -- that is,  
14 February and March of 1992, either Mr. Foster or Ms.  
15 Cline asking you to photocopy, handle, or perform  
16 tasks involving billing records measuring any size?

17 A I don't remember.

18 Q Do you recall during this period -- that is,  
19 in February or March of 1992 -- whether Mr. Hubbell or  
20 his secretary asked you to handle, photocopy, or  
21 otherwise perform tasks involving records measuring  
22 11 x 17 that are computer-generated?



1 A I do not remember.

2 Q Do you recall during this period, February  
3 or March of 1992, whether Mr. Hubbell or his  
4 secretary asked you to handle, photocopy, or perform  
5 tasks involving billing records?

6 A I don't remember.

7 Q Was part of your duty as a file clerk to  
8 check out files that -- check out Rose Law Firm files  
9 that are stored in storage facilities?

10 A Yes; sometimes.

11 Q Did Mr. Foster or Ms. Cline or any other  
12 secretary working for Mr. Foster ask you at any point  
13 to check out files from storage relating to Madison  
14 Guaranty?

15 A I don't remember doing that.

16 Q Do you recall anyone asking you to check  
17 out files relating to Madison Guaranty?

18 A No, I do not.

19 Q The reason I ask, Ms. Hatch, is that I  
20 believe sometime in March and May of 1992, I believe,  
21 somebody checked out records from the storage  
22 facilities of the Rose Law Firm, records relating to

1 Madison Guaranty, and we have not been able to  
2 identify who those persons are.

3 Do you have any knowledge as to who those  
4 persons are?

5 A I do not.

6 Q Now you said that as a general matter your  
7 general duties do not include handling or dealing  
8 with billing records or time sheets.

9 Correct?

10 A What do you mean by "handling"?

11 Q Like making photocopies, or filing, or  
12 otherwise help preparing.

13 A I could possibly photocopy.

14 I don't prepare, as in entering the time,  
15 if that is what you mean.

16 Q Do you type up any of these time sheets or  
17 billing records?

18 A No, I do not.

19 Q Do you generally -- are you generally asked  
20 to photocopy timesheets?

21 A Sometimes, yes.

22 Q When you say "sometimes," is it a regular

1 part of your duties? Or is it more occasional?

2 A I would think it was occasional.

3 Q Do you recall at any point during your  
4 tenure with the Rose Law Firm anybody discussing with  
5 you, or do you recall overhearing any discussions,  
6 about records of the firm's billings to Madison  
7 Guaranty Savings & Loan Association?

8 A No, I do not remember anything like that.

9 Q Now during the late period in 1992, at the  
10 end of 1992 and the early part of 1993, you know of  
11 course there was a number of persons who were moving  
12 to Little Rock -- from Little Rock to Washington, and  
13 specifically from the Rose Law Firm to the White  
14 House.

15 Do you recall there being documents -- do  
16 you recall during this period of time that there  
17 would be document transfers from the Rose Law Firm to  
18 the White House?

19 A I don't recall anything like that.

20 Q Did you help pack up Mr. Foster's office  
21 when he moved to Washington?

22 A I did not -- What do you mean by "his

1 office"?

2 Q His office at the Rose Law Firm.

3 A Okay, do you mean like the knickknacks?

4 MR. ATKINS: Are you referring to files,  
5 or are you referring to furniture and books?

6 BY MR. DINH: (Resuming)

7 Q Files, more specifically.

8 A I did box up some of Mr. Foster's files.

9 Q And these files were eventually  
10 transferred to Washington?

11 A I do not know what happened to them.

12 I just know I put them in boxes.

13 Q Who did you give the boxes to?

14 A As far as I can remember, they sat in his  
15 office for quite awhile.

16 I don't know -- I don't remember where they  
17 went after that.

18 Q Do you recall who picked them up?

19 A I do not.

20 Q Do you recall who instructed you to pack  
21 up these files?

22 A Mr. Foster's secretary.

1 Q That would be Ms. Cline?

2 A Right.

3 Q Do you recall the general nature of these  
4 files?

5 A I believe most of the files were possibly  
6 his personal files.

7 That's all I recall seeing.

8 Q By "personal files," do you recall seeing  
9 any time sheets or billing records or anything like  
10 that within the materials you packed up for Mr.  
11 Foster?

12 A I don't recall specifically what were in  
13 the files.

14 Q By "personal files," do you mean like  
15 correspondence, and taxes, and the like?

16 Actually, what do you mean by "personal  
17 files"?

18 A Mr. Foster had personal files -- his  
19 personal correspondence, files on his children's  
20 college, and various things like that that pertained  
21 to him and his family, mostly.

22 Q Were you the only one packing up Mr.

---

30

1 Foster's files?

2 A I don't know that.

3 Q At the time you were packing up Mr.  
4 Foster's files, was anybody else there with you?

5 A Ms. Cline would be at her desk doing some  
6 work, and I would be putting the files in some boxes.

7 Q Would Ms. Cline put any files in boxes?

8 A I don't know.

9 Q Now were there other files in the office  
10 other than Mr. Foster's personal files?

11 A I don't recall any other files. I don't  
12 know.

13 Q When Ms. Cline asked you to pack up Mr.  
14 Foster's files, did she ask you to pack up  
15 specifically these file cabinets? Or did she say  
16 "pack up the files in Mr. Foster's office"?

17 A I think Ms. Cline showed me which files  
18 needed to be put in the boxes.

19 Q Did any of the files that you put in the  
20 boxes, were any of them related to Mr. Foster's or  
21 other attorneys' work at the Rose Law Firm for  
22 clients?

1 A I don't recall any.

2 Q Did you have any conversations with Mr.  
3 Foster after he left Little Rock for the White  
4 House?

5 A No.

6 Q With Mr. Hubbell, after he left Little  
7 Rock to go to the White House?

8 A No.

9 Q With Mrs. Clinton?

10 A No.

11 Q With Mr. Kennedy?

12 A No.

13 Q So am I correct in assuming that the last  
14 time you saw or spoke with Mr. Foster was prior to  
15 January 19th, 1993?

16 A I saw Mr. Foster one time when he came  
17 through Little Rock on his way to the May graduation  
18 in Fayetteville shortly before his death.

19 Q And do you recall what month that was?

20 A It was in May.

21 Q Did you speak to Mr. Foster?

22 A I might have said "hello," but that was

1 probably it.

2 Q You didn't have a substantive conversation  
3 with him?

4 A No, I did not.

5 Q Other than packing up Mr. Foster's office  
6 in the period at the end of 1992 and the beginning of  
7 1993, were you asked to pack up or otherwise assemble  
8 any other files during that period for transport?

9 A No; I don't recall doing that.

10 Q Do you know who Millie Alston is?

11 A Yes, I do.

12 Q And what was her position while she was at  
13 the Rose Law Firm?

14 A While I was at the Law Firm, she was  
15 secretary to Hillary Clinton.

16 Q And in what capacity do you know Ms.  
17 Alston? Is it more social, or do you have occasion  
18 to work with Ms. Alston?

19 A I had occasion to work with Ms. Alston  
20 while we were at the firm.

21 Q Can you tell me more specifically on what  
22 occasion that was?



1 A Just general business during the day.  
2 Maybe making copies for her, or picking up something  
3 for her and bringing it to her desk.

4 Q Were you assigned to Mrs. Clinton at any  
5 time while you were a file clerk?

6 A I don't believe I was ever Mrs. Clinton's  
7 file clerk.

8 Q But you would perform tasks for attorneys,  
9 or for secretaries of attorneys who you were not  
10 assigned to?

11 A Right.

12 Q So these tasks would be more occasional.

13 A I'm sorry? What was the question?

14 Q And so these tasks for attorneys to whom  
15 you were not assigned would be more occasional rather  
16 than as a regular part of your duties?

17 A Yes.

18 Q Do you recall handling or being asked to  
19 copy, or to handle, or to perform any tasks  
20 involving -- by Mrs. Clinton or her secretary --  
21 involving printouts measuring 11 x 17?

22 A I don't recall.

1 Q Okay. Do you recall Mrs. Clinton or her  
2 secretary asking you to handle, copy, or perform  
3 tasks involving any billing records or time sheets?

4 A I don't remember.

5 Q I take it that Ms. Alston is no longer at  
6 the firm?

7 A Right.

8 Q Do you recall approximately when she left  
9 the firm?

10 A Sometime in 1993.

11 Possibly the early part of 1993, I  
12 believe.

13 Q Have you had occasion to talk or to meet  
14 Ms. Alston since she left the law firm to go to  
15 Washington?

16 A I saw Ms. Alston at Mr. Foster's funeral.

17 Q Did you have a conversation with Ms.  
18 Alston?

19 A A very brief conversation.

20 Q Was this conversation in the nature of  
21 condolences?

22 A Yes.

1 Q Did you have any conversation with Ms.  
2 Alston or anybody else at the funeral relating to  
3 Whitewater or Madison?

4 A No, I did not.

5 Q Other than seeing Ms. Alston at Mr.  
6 Foster's funeral, did you have occasion to speak for  
7 her or to meet with her at any other time since she  
8 left the firm in 1993?

9 A No, I have not.

10 Q Did you send any records to her after she  
11 left the firm?

12 A No, I did not.

13 Q Do you know whether any in  
14 the firm did send any records to her after she left  
15 the firm?

16 A I do not know.

17 Q Would there be more than one file clerk  
18 assigned to a particular attorney?

19 A No.

20 There would only be one file clerk to the  
21 attorney.

22 Q Do you know who Ms. Carolyn Huber is?

---

1 A Yes, I do.

2 Q Was she a former employee of the Rose Law  
3 Firm?

4 A Yes.

5 Q Do you recall when, approximately, did she  
6 leave the firm?

7 A I believe she left in early or the middle  
8 part of 1993.

9 Q Again, to go to Washington?

10 A That's my understanding.

11 Q Have you talked to Ms. Huber since she's  
12 left the Law Firm?

13 A I have seen Mrs. Huber.

14 I don't recall if I saw her at Mr.  
15 Foster's funeral, but I have seen her one time other  
16 than that.

17 Q When was this one time?

18 A I think I saw Mrs. Huber sometime this  
19 winter.

20 I cannot recall when.

21 She was visiting her in Little Rock, and I  
22 happened to cross her and said "hello."

1 Q Other than to exchange greetings, did you  
2 have a substantive conversation with her?

3 A No, I did not.

4 Q I think I asked you this question  
5 specifically with respect to Mr. Foster and Mr.  
6 Hubbell, but let me ask it more generally.

7 During your time at the Rose Law Firm, has  
8 anyone asked you to handle or perform tasks related  
9 to Madison Guaranty?

10 A I do not recall anyone asking me to do  
11 that.

12 Q Did you in fact perform any such tasks  
13 relating to Madison Guaranty?

14 A I do not remember.

15 Q Do you recall anyone asking you to perform  
16 any tasks relating to litigation involving Frost &  
17 Company?

18 A I don't remember.

19 Q Let me just cut to the chase and tell you  
20 that the reason, the primary if not sole reason why  
21 we are conducting this deposition is that your  
22 fingerprint was discovered on a set of Rose Law Firm

1 records reflecting billings to Madison Guaranty  
2 Savings & Loan Association.

3 Do you have any idea as to how it may have  
4 gotten there?

5 A It's very possible I could have been asked  
6 to pick them up.

7 I don't know.

8 It would just be a guess.

9 MR. IVEY: What was that?

10 THE REPORTER: "It's very possible I could  
11 have been asked to pick them up. I don't know" --

12 MR. DINH: "It would have been a guess."

13 THE REPORTER: "-- It would just be a  
14 guess."

15 BY MR. DINH: (Resuming)

16 Q You don't have any specific recollection  
17 of picking up any such records?

18 A I do not.

19 Q Do you have any specific recollection of  
20 being asked to photocopy such records?

21 A I do not.

22 Q And do you -- I take it, then, you do not

1 have know approximately when you would have been  
2 asked to handle or copy those records?

3 A No, I do not.

4 Q When you are asked to photocopy something  
5 for an attorney or for an attorney's secretary, what  
6 do you do with the originals?

7 A I hand the originals and the copies back  
8 to the secretary or the attorney.

9 Q Whoever asked you to perform the task, you  
10 would return it to that person?

11 A Right, unless otherwise directed.

12 Q And that would be routine?

13 A That would be routine.

14 Q Are there occasions when you would deviate  
15 from this routine?

16 That is, to keep a copy for yourself or  
17 something like that?

18 A No.

19 Q Have you been instructed not to give the  
20 originals back but to place them elsewhere?

21 A On occasion, yes.

22 Q And those locations would be?

1 A I could be asked to put the originals back  
2 in a file, or give them to answer attorney. It  
3 varied.

4 Q Do you recall, on the occasion that you  
5 recall generally Mr. Foster or his secretary asking  
6 you to photocopy or handle computer-generated records  
7 measuring 11 x 17, do you recall whether on any such  
8 occasion that you were asked to place the originals  
9 elsewhere other than return them to the attorney -- to  
10 Mr. Foster or to his secretary?

11 A I don't recall.

12 Q Other than your attorneys or your  
13 immediate family members, have you had any  
14 discussions with anyone relating to billing records  
15 of the Rose Law Firm to Madison Guaranty Savings &  
16 Loan Association?

17 A No, I have not -- Oh, I have talked to the  
18 FBI and Independent Counsel.

19 Q Right. Right.

20 Is Ms. Cline still at the Rose Law  
21 Firm?

22 A Yes, she is.



1 Q Is she still a secretary there?

2 A Yes, she is.

3 Q (Pause.)

4 Do all photocopiers at the Rose Law Firm  
5 have the capability of copying 11 x 17 paper?

6 A Yes, they do.

7 Q And this was the case in 1992 also?

8 A Yes.

9 Q Have you ever visited the White House?

10 A No, I have not.

11 Q Have you been asked to handle, copy, or  
12 perform tasks involving an entity called Castle  
13 Grande?

14 A I do not recall ever doing that.

15 Q Did Mr. Hubbell or his secretary ever ask  
16 you to handle or perform tasks relating to records  
17 measuring -- computer-generated records measuring 11 x  
18 17?

19 A I don't remember.

20 Q Did Mr. Hubbell or his secretary ever ask  
21 you to handle, copy or perform tasks relating to  
22 billing records?

1 A I don't remember.

2 Q Have you ever met Bill Clinton?

3 A I have seen him.

4 Q Have you ever talked to him?

5 A I believe I said something to him very  
6 briefly at Mr. Foster's funeral.

7 Q You did not have a substantive  
8 conversation with him, however?

9 A No.

10 Q Have you been asked to send any documents  
11 to the White House?

12 A No, I have not.

13 Q Have you been asked to pack up any  
14 documents with the intention of them being  
15 transported to the White House or to Washington?

16 A No, I have not.

17 Q While you were at the Rose Law Firm, did  
18 you ever participate in, witness, have any  
19 discussions about, or overhear any discussions about  
20 any destruction or alteration of records relating to  
21 the Madison Guaranty Savings & Loan Association or  
22 Whitewater Development Corporation?

1 A No, I have not.

2 Q Did Mrs. Clinton or any of her secretaries  
3 ever ask you to pack up any files?

4 A I don't remember doing so.

5 Q Did Mr. Hubbell or his secretary ask you  
6 to pack up any files?

7 A I don't remember them asking.

8 Q Do you remember actually packing up any  
9 files for Mr. Hubbell or his secretary?

10 A No, I don't remember doing that.

11 Q Do you have any knowledge as to how Rose  
12 Law Firm billing records relating to its work for  
13 Madison Guaranty ended up in the third floor of the  
14 White House residence?

15 A No, I don't.

16 I don't have any idea.

17 Q Do you have any knowledge as to how they  
18 got to Washington?

19 A No, I do not.

20 Q Do you have any knowledge as to how they  
21 left the law firm?

22 A No, I do not.

1 Q Do you have any knowledge as to who  
2 generated them or compiled them?

3 A I do not.

4 Q Do you have any knowledge as to who may  
5 have handled such records -- by "such records," I mean  
6 the records reflecting billings from the Rose Law  
7 Firm to Madison Guaranty.

8 A No, I don't.

9 MR. DINH: I have nothing further.

10 MR. IVEY: No questions from me. Thank  
11 you for your time.

12 MR. DINH: Do you have any clarifying  
13 questions, Mr. Atkins or Mr. Clark?

14 MR. ATKINS: No.

15 MR. CLARK: Not from me.

16 MR. DINH: Thank you very much for your  
17 time, gentlemen.

18 MR. ATKINS: Okay.

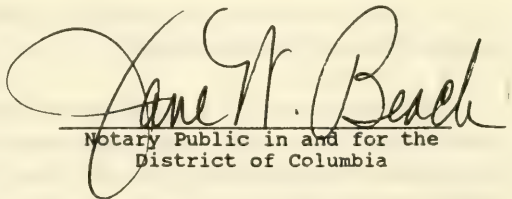
19 MR. IVEY: Have a good day.

20 (Whereupon, at 3:05 p.m., Thursday, June  
21 6, 1996, the telephone deposition of Sandra Hatch was  
22 adjourned.)

CERTIFICATE OF NOTARY PUBLIC & REPORTER

45

I, JANE W. BEACH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the  
District of Columbia

My Commission Expires NOVEMBER 14, 1996

DEPONENT Sandra J. Hatch

## ERRATA

[illegible]





**DEPOSITION OF MILDRED C. ALSTON  
IN RE: S. RES. 120**

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**FRIDAY, JUNE 7, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of MILDRED C. ALSTON, called for examination pursuant to notice of deposition, at 11:10 a.m. in Room 640-B of the Hart Senate Office Building, before JANE W. BEACH, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.  
Majority Chief Counsel  
ALICE S. FISHER, Esq.  
Majority Deputy Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

HENRY F. SCHUELKE III, Esq.  
Janis, Schuelke & Wechsler  
1728 Massachusetts Avenue, NW  
Washington, DC 20036  
On behalf of the Deponent.

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## PROCEEDINGS

## COMMITTEE CONFIDENTIAL

(11:10 a.m.)

MR. GIUFFRA: Good morning, Mrs. Alston. My name is Robert Giuffra. I am the Chief Counsel of the Senate Banking Committee, and to my right is Alice Fisher who is Deputy Special Counsel to the Whitewater Committee.

Further down the table is Glen Ivey, who is Minority Counsel to the Banking Committee, and I think also to the Whitewater Committee, and he represents the Democrats.

This is a deposition that is being conducted pursuant to Senate Resolution 120.

This Resolution establishes a Special Committee which is administered by the Banking Committee to conduct an investigation into Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, and other related matters.

Now your deposition is being conducted and

---

4

will be used either for a report that the Committee is now in the process of preparing and/or might be -- you might have to come and testify at public hearings, although no decision along those lines has been made, and that would depend in part on your testimony.

The procedures for the conduct of depositions are set forth in Senate Resolution 120, and essentially go as follows:

The Deposition will be recorded by the Court Reporter who will report a transcript. You will have an opportunity to look at that transcript and make corrections to it.

I will ask questions initially, then Mr. Ivey will ask questions.

You have a right to be represented by counsel, and I see you have chosen to be represented by Mr. Schuelke.

Mr. Schuelke, would you state an appearance for the record?

MR. SCHUELKE: Henry F. Schuelke, Janis, Schuelke & Wechsler, for the witness.



1 MR. GIUFFRA: Mr. Schuelke may object to  
2 questions as to their form, and we also have a  
3 procedure for objections to relevance and to  
4 privilege matters.

5 MR. IVEY: And scope.

6 MR. GIUFFRA: And scope.

7 Your deposition will be kept confidential  
8 until either a public hearing or it is used in the  
9 report.

10 If you are asked to come for public  
11 hearing, given the amount of time we have left we  
12 will give it to you right away so you have a chance  
13 to look at it and make whatever corrections need to  
14 be made.

15 Do you have any questions?

16 THE WITNESS: (Nods in the negative.)

17 MR. GIUFFRA: Mr. Schuelke?

18 MR. SCHUELKE: No, thank you.

19 MR. GIUFFRA: We will try to make this as  
20 quick as possible.

21

22

1 Whereupon,

2 MILDRED C. ALSTON

3 was called for deposition in the above-entitled  
4 matter and, having been duly sworn by the Court  
5 Reporter, was examined and testified as follows:

6 EXAMINATION

7 BY MR. GIUFFRA:

8 Q Mrs. Alston, if you would state your name  
9 for the record and spell your last name?

10 A Mildred C. Alston, A-L-S-T-O-N.

11 Q What is your present position?

12 A I am a Special Assistant in White House  
13 Personal Correspondent.

14 Q Are you a Special Assistant to the  
15 President?

16 A I do work for the President and for the  
17 First Lady.

18 Q Your precise title is "Special Assistant  
19 to the President"? Or are you Special Assistant --

20 A It's Special Assistant, White House  
21 Personal Correspondent. It may be "Presidential  
22 Personal Correspondence. Whatever the --

1 Q And to whom do you report at the White  
2 House?

3 A Hmmm... I have dealings directly with  
4 the First Lady, and as far as the President is  
5 concerned I suppose Nancy Hernreich.

6 Q Who is Ms. Hernreich?

7 A She is, I believe her title is Director of  
8 Oval Office Operations.

9 Q Do you consider yourself to be reporting  
10 to the First Lady?

11 A Correct -- possibly to her Chief of Staff.

12 Q To Ms. Williams?

13 A Mae Williams, yes; Margaret Williams.

14 Q What are your duties as a Special  
15 Assistant in the White House Personal Correspondence  
16 office?

17 A I draft and prepare personal  
18 correspondence for both the First Lady and the  
19 President --

20 Q When you say --

21 A -- in response to correspondence they've  
22 received.

1 Q When you say "personal correspondence," is  
2 that correspondence they receive from the public  
3 generally, or is this correspondence from their  
4 friends or people who they are involved with for  
5 governmental purposes?

6 A Generally it's correspondence from people  
7 that they have known for awhile; or there may have  
8 been a business relationship, or a personal  
9 relationship, but it's people that they know. It's  
10 not just the general public.

11 Q Does anyone work with you in this office?

12 A Yes.

13 Q Who works with you?

14 A Maurine Lewis. And her responsibility is  
15 principally with the President's correspondence,  
16 full-time.

17 Q And you're principally responsible for the  
18 First Lady's correspondence?

19 A It's about a half-and-half responsibility  
20 at this time. I was doing just the First Lady's  
21 correspondence, and then the first of October -- or  
22 before the first of October last Fall I was asked if

1 I would be willing to care for personal  
2 correspondence for the President, as well.

3 Q So before October 1995, you were just  
4 doing personal correspondence for the First Lady?

5 A Correct.

6 Q Where is your office located?

7 A 214 East Wing.

8 Q Is your office in the same suite as the  
9 office of Carolyn Huber?

10 A Yes, it is.

11 Q Do you have a White House pass?

12 A Yes, I do.

13 Q When did you join the White House staff?

14 A February 1, 1993.

15 Q Since you joined the White House staff,  
16 what would you estimate would be the regularity of  
17 your contact with the First Lady?

18 A (Pause.)

19 Q If I could explain, did you see her every  
20 day? On a weekly basis? Several times a week?

21 A You're talking about personal contact?

22 Q Either by telephone or in person. If you

---

10

1 want to separate it out --

2 A Infrequent. Infrequent.

3 Q When you say --

4 A Most of our contact is just passing papers  
5 back and forth. Passing work back and forth.

6 Q With what frequency would you estimate?

7 Do you see her on a monthly basis? A  
8 weekly basis?

9 A It's difficult to say. There's sometimes  
10 I would not even see her on a monthly basis, to  
11 actually "see" her and be with her.

12 Q How often would you talk with her on the  
13 phone?

14 A Seldom.

15 Q So he will just communicate with you in  
16 writing, typically?

17 A Correct.

18 Q Now have you ever been to the White House  
19 residence?

20 A Yes, I have.

21 Q And have you ever been to a room described  
22 as "the Book Room" in the White House residence?

1 A I do not think that I have.

2 Q Have you ever been to the third floor of  
3 the White House residence?

4 A Yes, I have.

5 Q Have you been to an office which is  
6 maintained on the third floor, and at various times  
7 Mrs. Clinton and/or Chelsea have used?

8 A Yes, I have.

9 Q Could you just describe briefly for the  
10 record what you recollect about that office?

11 A I remember the location of it. You step  
12 off the elevator, walk across the hall, and straight  
13 into the office.

14 It is a light, pleasant room, open, airy.  
15 I believe there are built-in shelves on one wall, a  
16 desk in the center, and maybe a sofa and some chairs  
17 around. It's been quite some time since I've been  
18 there.

19 Q Have you ever been to the gymnasium on the  
20 third floor of the White House residence?

21 A No, sir. I do not even know where it is.

22 Q It would be your best recollection that

1 you've never been to the Book Room on the third floor  
2 of the White House?

3 A That's correct.

4 I think all -- anything I might know about  
5 the Book Room I've gathered from newspapers or  
6 testimony -- that I've seen on television.

7 Q Since you joined the White House staff  
8 February 1, 1993, approximately how many times would  
9 you estimate that you have been to the third floor of  
10 the White House residence?

11 A Hmmm... I would say probably less than a  
12 dozen times. Most of the times I've been there have  
13 been on personal occasions.

14 Q Just briefly, what were the circumstances  
15 under which you would have been to the third floor of  
16 the White House residence?

17 A I had been there with Carolyn Huber maybe  
18 two or three times.

19 Q Why were you there with Ms. Huber?

20 A Well, those were just personal -- you know,  
21 we were in the Solarium with Chelsea. I've been  
22 there for dinner with the First Family in the



1 Solarium when there were other friends present.

2 I remember visiting with a friend from  
3 Arkansas who was there.

4 Q Who was that friend?

5 A Kaki Hockersmith.

6 Q There are some living quarters on the  
7 third floor where guests stay?

8 A Correct.

9 Q Can you recall any other occasions when  
10 you might have been to the third floor of the White  
11 House residence?

12 A There are two or three occasions that I  
13 had spent the night in one of those rooms, one of the  
14 guest rooms.

15 There was, I can recall one occasion -- one  
16 occasion that I went to the third floor to look in a  
17 closet for a particular item. Carolyn Huber was out  
18 of town I think --

19 Q Where was the closet located?

20 A The closet was on the northernmost side of  
21 the White House, I would assume approximately in the  
22 center of the building.

---

1 Q And what were you looking for in the  
2 closet?

3 A I was looking for a letter that Chelsea,  
4 or I suppose a copy of a letter that Chelsea had  
5 written to President Reagan when she was a first  
6 grader.

7 Q Was this in the same room the office was  
8 located in?

9 A I don't think so -- no, the office was -- now  
10 this is the northern side of the White House. The  
11 office is on the south -- near the southwest corner of  
12 the third floor.

13 Q Is this particular room a room that has  
14 file cabinets containing documents?

15 A I do not recall any file cabinets. I  
16 think there were just shelves that had some  
17 boxes.

18 Q And were the documents Chelsea's  
19 documents? Or were they the Clintons' documents? By  
20 that, I mean the President and Mrs. Clinton.

21 A There were documents for all of them, I  
22 think, but I was looking for a specific document. So

1 that was my purpose for being there.

2 Q And these documents were in a room with  
3 shelves that had boxes on the shelves?

4 A Correct.

5 Q And were the boxes marked?

6 A They must have been because I would not  
7 have known which boxes to look in.

8 Q Was there anything else in the room  
9 besides the shelves and the boxes on top of the  
10 shelves?

11 A Not that I recall.

12 There may have been a step stool, or a  
13 ladder, a stool or something, but I'm not sure.

14 Q Do you recall any other occasions when you  
15 went to the third floor of the White House residence?

16 A There were, I would say, a couple of times  
17 that I was in the office for a group meeting, a staff  
18 meeting.

19 Q And who would those meetings have been  
20 with?

21 A Who would they have been with?

22 Q Yes.

1 A Probably Carolyn Huber, Capricia Marshall,  
2 Maggie Williams -- they've been a long time ago, and I  
3 can't remember, specifically, or even what they were  
4 about. I just remember being there.

5 Q Do you recall any other occasions when you  
6 went to the third floor of the White House residence?

7 A None other than the ones I've described.

8 Q Have you ever met a man by the name of  
9 David Kendall?

10 A Yes, sir.

11 Q What were the circumstances under which  
12 you met Mr. Kendall?

13 A I cannot remember the first -- the first  
14 time I met him, actually -- I do not remember the first  
15 time I saw him, but I have seen him, you know, a few  
16 times in Carolyn Huber's office, or I've seen him  
17 walking through the residence. I met him on the  
18 street one day. I recognize him from having seen  
19 him.

20 Q Has Mr. Kendall ever asked you to do  
21 anything that you can recall?

22 A There's only one thing that I can recall

1 that he's asked, and that is to get a copy of the  
2 list of retired files from Mrs. Clinton's law  
3 office.

4 Let me clarify that. There was a list in  
5 my office of these files, and he asked for a copy of  
6 them.

7 MR. SCHUELKE: When you say "from Mrs.  
8 Clinton's office," which office do you have in mind?

9 THE WITNESS: The Rose Law Firm. These  
10 are a list of retired files from her Rose Law Firm  
11 work.

12 BY MR. GIUFFRA: (Resuming)

13 Q When you say "retired files," what do you  
14 mean by that?

15 A They were just the lists of files that had  
16 been -- inactive files that had gone to remote storage  
17 at the Rose Law Firm.

18 Q Do you recall approximately when  
19 Mr. Kendall would have asked you to look for this  
20 list of retired files?

21 A I do not recall exactly, except I would  
22 say in 1994 because I believe in 1994 was the first

1 time I was interviewed regarding any of these.

2 Is that correct?

3 MR. SCHUELKE: You're asking me?

4 THE WITNESS: Yes.

5 MR. SCHUELKE: I would say '94 is probably  
6 right.

7 THE WITNESS: 1994 was the first, and I  
8 had the original of the documents. And then he, I  
9 believe he had to -- you know, had to have access to  
10 the originals, and he had been provided copies. So I  
11 said they were very difficult to copy because they  
12 were -- some of them were on continuous computer  
13 sheets, and it was hard to get like a legal size, the  
14 entire amount copied.

15 And I asked him if we could please just  
16 exchange his copy for my originals. So we did that.

17 MR. GIUFFRA: Could we go off the record a  
18 second?

19 (Discussion off the record.)

20 MR. GIUFFRA: Back on the record.

21 BY MR. GIUFFRA: (Resuming)

22 Q Why don't I go back in time a bit.

1 Prior to coming to the White House, did  
2 you work at the Rose Law Firm?

3 A Yes, sir.

4 Q And from when to when did you work at the  
5 Rose Law Firm?

6 A January 3, 1989, through January 29, 1993.

7 Q Prior to joining the Rose Law Firm in  
8 January 3, 1989, what did you do?

9 A I had worked for various attorneys in the  
10 State of Arkansas. We had moved about. My husband  
11 is a Minister, and so as -- I've moved along with his  
12 moves. I had worked for other attorneys.

13 Q At the Rose Law Firm, what did you do?

14 A I was Mrs. Clinton's secretary.

15 Q So you were her personal secretary?

16 A Correct.

17 Q When did you first meet Mrs. Clinton?

18 A The day that I was interviewed for that  
19 job, which was within the week before Christmas of  
20 1988, just within a couple of weeks before I began  
21 work.

22 Q While you were at the Rose Law Firm, did

---

20

1 you work with Mr. Vincent Foster?

2 A Are you asking if I did work for him?

3 Q Strike that. Why don't I rephrase the  
4 question.

5 Did you ever do any work for Vincent  
6 Foster?

7 A Not that I recall.

8 Q You knew Mr. Foster?

9 A Yes, I did.

10 Q And with regard to Mr. Hubbell, you didn't  
11 do any work for Mr. Hubbell?

12 A No, sir.

13 Q But you knew Mr. Hubbell?

14 A Yes.

15 They had their own secretaries.

16 Q Let me direct your attention to 1992 and  
17 the Presidential Campaign.

18 Did there ever come a time when anyone  
19 asked you to locate documents relating to either  
20 Whitewater Development Corporation or Madison  
21 Guaranty Savings & Loan?

22 A I do not recall that.



1           However, if I was asked to get documents  
2 for any client for one of the attorneys, I did it.  
3 But specifically to say that I recall those  
4 particular documents, I do not.

5       Q    I want to be careful that I phrase the  
6 question properly. I am not just limiting my  
7 question to, for example, the now-famous "Rose Law  
8 Firm billing records."

9       A    I understand that.

10      Q    Any documents relating to either Madison  
11 or Whitewater Development Corporation.

12      A    I don't recall getting documents -- well,  
13 let me try to clarify my answer.

14           In the course of my work, I would often be  
15 asked to provide documents from the files by Mrs.  
16 Clinton or by one of the other attorneys who might be  
17 working with her on a case, or something.

18           And if I were requested to do that, I did  
19 it. But I don't remember what all the documents or  
20 files might have been that I was requested to  
21 provide.

22      Q    Do you ever recall speaking during the

---

22

1 1992 Presidential Campaign with somebody by the name  
2 of Loretta Lynch?

3       A    I remember the name. I don't recall if I  
4 spoke with her directly, but I do remember the name.  
5 I knew she was somebody that was working at the  
6 campaign.

7       Q    She might have been calling and leaving a  
8 message for Mrs. Clinton, perhaps?

9       A    Possibly. I just --

10      Q    Or she might have been calling directly.

11      A    I don't recall actually speaking to her.

12      Q    But the name "Loretta Lynch" is familiar?

13      A    The name is familiar.

14      Q    How about Betsy Wright?

15      A    I know Betsy's name and who she is, but I  
16 do not recall speaking with her during the campaign.  
17 Is that your question?

18      Q    Yes.

19      A    I do not recall actually speaking with  
20 her.

21      Q    How about Diane Blair?

22      A    Not -- I don't recall speaking with her

1 during the campaign.

2 Q How about a person by the name of Susan  
3 Thomases?

4 A I knew who Susan was, and I remember  
5 seeing her. I remember on one occasion when I was  
6 over at the headquarters. But I don't remember  
7 having conversations with her.

8 Q Did there ever come a time when you were  
9 asked to bring anything to the headquarters, campaign  
10 headquarters?

11 A No, sir, I don't.

12 Q You just mentioned that you'd been to the  
13 headquarters.

14 A Yes.

15 Q Do you remember the circumstances under  
16 which you would have been to the campaign  
17 headquarters -- by "campaign headquarters," you mean  
18 the Clinton Campaign Headquarters?

19 A Correct.

20 I can't remember my mission for being  
21 there. I remember I stopped by there when I would be  
22 out for lunch. I knew a number of people who worked

1 there.

2 I would sometimes stop and get -- they had  
3 some souvenirs for sale over there. But I don't  
4 remember a particular assignment for going there.

5 Q You don't recall whether you ever brought  
6 anything over -- any documents from the Rose Law Firm  
7 to the campaign headquarters?

8 A No, sir, I don't.

9 You are speaking of Rose Law Firm  
10 documents?

11 Q Or any documents.

12 A No, sir.

13 Q Do you recall anything about any  
14 conversations you might have had with Susan Thomases  
15 during the 1992 Presidential Campaign?

16 A No, sir.

17 Q Did you have any contact with someone  
18 named James Blair during the 1992 Presidential  
19 Campaign?

20 A No, sir.

21 Q Bruce Lindsey?

22 A I don't think so.

1 Q When was the first time you ever heard of  
2 something called "Whitewater Development  
3 Corporation"?

4 A There was a file in the files that I  
5 maintained that was a Whitewater file. I don't  
6 remember if it was "Whitewater Development  
7 Corporation" or, I think there was something a  
8 "Whitewater Estates" something. I don't remember the  
9 exact name of the file, but there was a file in the  
10 files in my file cabinet that was a Whitewater file.

11 Q These files would have been Mrs. Clinton's  
12 files?

13 A Correct. Personal files.

14 Q And you recall that there was a file  
15 marked either "Whitewater," or "Whitewater Estates"  
16 among Mrs. Clinton's files you maintained at the Rose  
17 Law Firm?

18 A Correct.

19 Q Do you ever recall putting any documents  
20 into that file, or removing any documents from that  
21 file at any time?

22 A Yes.

1 Q When would you -- Do you recall either  
2 putting documents in or removing them from that file?

3 A On an occasional basis, Mrs. Clinton would  
4 receive in the mail from a bank, and I do not recall  
5 the name of the bank, but there would be a --

6 Q First Ozark? I'm sorry.

7 A I'm sorry, I don't recall.

8 But there would be two slips of paper with  
9 a corresponding amount. One was a deposit slip, and  
10 one was something else, but the amount was the same  
11 on both slips. And as I routinely did, I opened her  
12 mail and gave it to her, and these were always  
13 returned to me to file.

14 I would drop them in that file. And  
15 actually that's all I recall of handling anything  
16 that had "Whitewater."

17 Q Was it Mrs. Clinton's routine practice  
18 that you would open her mail but provide her -- let her  
19 look at everything that came in?

20 A Yes, sir.

21 There may have been occasions -- I do not  
22 recall any exceptions to that.

1 Q Do you recall anything more about this  
2 Whitewater file?

3 A No, sir.

4 Q Did you maintain an index of Mrs.  
5 Clinton's files at the Rose Law Firm?

6 A To her current files?

7 Q Either her current or past files.

8 A Okay, the retired files were indexed as  
9 they were retired.

10 Q By "retired," those would be the files  
11 that would have gone to the remote storage unit that  
12 the Rose Law Firm had?

13 A Correct. They would be gathered, boxed  
14 up, indexed and sent to remote storage. And they  
15 would assign them a number for their filing purposes.

16 Q And then you would have an index of the  
17 files of Mrs. Clinton's that were at remote storage?

18 A Correct. I would have a list for each of  
19 those groups of files that we'd sent over.

20 Q And this list would say ABC Corporation,  
21 XYZ Corporation? It would list the name of the file  
22 that would be over there at remote storage?

1 A Correct.

2 Q Did you maintain an index of those  
3 documents that were current that she had in her file  
4 cabinets that were at the actual Rose Law Firm  
5 premises?

6 A I believe we did. There was not -- let's  
7 see. I'm not sure we had a list of the current  
8 files, of what was actually in the cabinet.

9 Q Do you recall approximately how thick the  
10 Whitewater Development or the Whitewater Estates file  
11 was?

12 A I don't remember how thick it was, except  
13 that it was loose pages within a, I believe it was in  
14 an expandable folder, a red-rope folder. That's how  
15 they were commonly referred to. I don't know if they  
16 do that here.

17 Q We call them the same thing.

18 Would you say the file would have been  
19 about an inch or two thick? Or is that incorrect?

20 A I don't think it would have been that  
21 thick, because it was -- expanded it's probably two  
22 inches, and as I recall it was just loose, these



1 loose slips within the file.

2 Q Do you recall anything else that might  
3 have been in it? Were there any letters, for  
4 example, in the file?

5 A I do not recall that. Because I did so  
6 little -- about all I did as far as Whitewater --

7 Q You just recall those slips going into the  
8 file?

9 A I just put those slips in when they came  
10 in. I didn't even know what the slips were for.

11 Q Now after Mrs. Clinton became First Lady,  
12 do you know what happened to that file, the  
13 Whitewater file?

14 A I think it stayed within the group of  
15 personal files that I left in custody of another  
16 attorney.

17 Q And who would that have been?

18 A Amy Stewart.

19 -- to await Mrs. Clinton's instructions for  
20 disposition of them, because these were personal --  
21 these were personal files. They were not Rose Law  
22 Firm files.

1 Q Do you recall what happened to those  
2 files, or do you know?

3 A I left them with Amy Stewart, and they  
4 were -- because the area where my desk and office space  
5 was was to be vacated for another -- another attorney  
6 was taking Mrs. Clinton's office and another  
7 secretary was taking that area -- they were moved to  
8 file cabinets near Amy's office.

9 And they were later, after Mrs. Clinton  
10 determined what she wanted done with the various  
11 files, I believe that file was among the files that  
12 were sent to Washington at her direction.

13 Q And do you know where that file was sent  
14 at the White House?

15 A I assume -- okay, these files were shipped  
16 to me.

17 Q They were shipped to you?

18 A They were shipped to me.

19 Q By Amy Stewart?

20 A Yes, or by her file -- under her direction,  
21 yes, and they were -- when they came, I mentioned to  
22 Carolyn Huber, here are Hillary's personal files.

1 What would she want done with them?

2 And I think they sat in my office for a  
3 few days. Then, later I believe were moved to the  
4 residence.

5 Q Do you know where in the residence those  
6 files were moved?

7 A I have no idea.

8 Q Do you know when these documents would  
9 have been shipped from Little Rock to Washington?

10 A I would say the Spring of '93.

11 Q Do you know how many boxes of documents  
12 were shipped from Little Rock to Washington?

13 A There were two boxes, two banker's boxes.  
14 Is that description adequate for you? Not large.

15 Q Just to be sure on one thing, in terms of  
16 what was in the Whitewater file, you're sure that  
17 there were these slips that you received from "a"  
18 bank.

19 Correct?

20 A That I received? Pardon me?

21 Q That Mrs. Clinton received from "a" bank.

22 A Yes.

1 Q And you don't know what else might have  
2 been in the file?

3 A I do not recall.

4 Q One way or the other, whether there was  
5 more or less? Whether there were just the slips, or  
6 something else, you just don't know?

7 A I don't recall.

8 Q When was the first time you ever heard of  
9 something called Madison Guaranty Savings & Loan  
10 Association?

11 A I may have heard the name spoken, you  
12 know, within the Firm, but I don't really have a  
13 clear memory of it until after I was in Washington  
14 because I didn't do any work on it. That preceded my  
15 time with her.

16 Q When was the first you ever heard of a man  
17 by the name of James McDougal?

18 A Here.

19 Q Did James McDougal ever call Mrs. Clinton  
20 while she was in Little Rock?

21 A Not that I recall.

22 Q How about Susan McDougal?

1 A Not that I recall. They could have  
2 called, and I may have taken a phone message, but I  
3 do not recall the names.

4 Q Have you ever heard of a person by the  
5 name of Margaret Davenport?

6 A Margaret Davenport?

7 Q Yes.

8 A Yes.

9 Q Who is Margaret Davenport?

10 A The first I knew of her, she was a vice  
11 president at Twin City Bank in North Little Rock. I  
12 understand she was a friend of Mrs. Clinton, and  
13 she -- I recall she married while I was working for  
14 Mrs. Clinton. She married someone named Dave  
15 Eldridge.

16 Q Was she someone who frequently called Mrs.  
17 Clinton while you were working as Mrs. Clinton's  
18 secretary?

19 A Not frequently.

20 Q Other than the one incident you mentioned  
21 in which you obtained from Mr. Kendall a copy of an  
22 index of Mrs. Clinton's retired files from the Rose

1 Law Firm, did you have any other involvement in  
2 collecting documents for Mr. Kendall?

3 A No, sir.

4 Q Did you ever have any conversations with  
5 Mr. Kendall, other than the one you just testified  
6 to, about the location of documents that Mr. Kendall  
7 was looking for?

8 A No, sir.

9 Q Was that primarily Mrs. Huber who was in  
10 contact with Mr. Kendall?

11 A I don't know what their contacts were.  
12 That was...

13 (Pause.)

14 Q Back in 1994 when you spoke to Mr. Kendall  
15 about getting this, it was an index he wanted you to  
16 get of the retired files? Or did he actually want  
17 you to get documents from remote storage?

18 A No, sir, not from remote storage.

19 I'm trying to recall all this after you've  
20 raised the question. I think perhaps when I was  
21 first involved with all of this, I had to --

22 Q By "this," you mean?

1 A Well, with this Whitewater, this stuff.

2 -- we probably received subpoenas, or  
3 requests for documents, or something or other, and I  
4 had in my possession this file of retired -- the  
5 listing of retired documents from the Rose Firm which  
6 had been sent by Amy Stewart's office.

7 And at that time, I provided a copy of it  
8 to Mr. Schuelke, or whenever we were asked to --  
9 numerous times we've been asked to search our files  
10 for whatever we have that had Whitewater, or various  
11 names -- well, you know what we've been asked for -- and  
12 I provided a copy for Mr. Schuelke, and maintained  
13 the original.

14 And then whenever David Kendall needed the  
15 original for whatever purpose, and I suppose -- I don't  
16 know if I gave David Kendall a copy originally or if  
17 you gave him a copy --

18 MR. SCHUELKE: You can only testify about  
19 what you recall.

20 THE WITNESS: I do not recall.

21 But, anyway, he had a copy of those lists  
22 that I had, and Mr. Schuelke had a copy. So when he

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1 needed the originals of that, I asked if we could  
2 just trade since they had been so difficult to copy.  
3 He gave me his copies, I gave him my originals.

4 BY MR. GIUFFRA: (Resuming)

5 Q Now this list would have corresponded to  
6 the files that Mrs. Clinton had at the remote storage  
7 facility that the Rose Law Firm maintained?

8 A Yes.

9 Q Do you know whether -- I'm sorry.

10 A Because the list, or the file was, in my  
11 opinion, in very poor order, it was a file that had  
12 been maintained over many years, and in various  
13 formats, and at one time I asked remote storage to  
14 provide me a copy of all of Mrs. Clinton's files that  
15 they had.

16 I asked them to provide me a copy of the  
17 list that they had in storage for her -- I haven't said  
18 that correctly.

19 Q Did Mrs. Clinton ask you to get this list?

20 A I don't think so. I think it was just to  
21 have a current listing of "this is the files that  
22 remote storage has for Mrs. Clinton." Because there



1 were so many sheets of paper. I don't remember how  
2 thick it was --

3 Q About an inch thick?

4 A At least.

5 Many of them were old listings, and this  
6 would provide a current listing of what they actually  
7 had in storage for her.

8 Q Okay. So this file consisted of -- it was a  
9 file Mrs. Clinton maintained while she was at the  
10 Rose Law Firm; right?

11 A Correct.

12 Q And this is where she kept track of what  
13 files she had sent to the Rose Law Firm remote  
14 storage?

15 A Correct.

16 Q And the file consisted of sheets of paper  
17 describing documents that she had that were in remote  
18 storage? Correct?

19 A Correct.

20 Q And did it include some computer  
21 printouts?

22 A I don't think it did.

1 Q You mentioned, maybe about 15 minutes ago,  
2 computer printouts. Would it have had computer  
3 listings, computer-generated listings on the files  
4 that were in remote storage?

5 A I don't recall --

6 MR. SCHUELKE: Do you mean, was the list  
7 itself generated by a computer?

8 MR. GIUFFRA: Correct.

9 THE WITNESS: A word processor, not a --  
10 well, I don't remember listing -- mentioning a computer  
11 list.

12 BY MR. GIUFFRA: (Resuming)

13 Q Were there other documents besides the  
14 list within this file?

15 A No, sir.

16 Q Did there ever come a time after you went  
17 to Washington that documents were sent from remote  
18 storage of the Rose Law Firm to either you or to the  
19 White House, as far as you know?

20 A No, sir.

21 Q Now other than the documents that you  
22 testified to that Ms. Stewart, the two boxes, sent

1 from the Rose Law Firm, did you have any other  
2 documents in your office relating to Mrs. Clinton's  
3 work at the Rose Law Firm?

4 A No, sir.

5 Q Do you recall whether Madison Guaranty was  
6 listed among the clients for whom Mrs. Clinton at one  
7 time or another had send documents to the Rose Law  
8 Firm remote storage?

9 A I don't recall that.

10 Q Now what was it that caused you to provide  
11 this index, or at least the file containing the files  
12 of Mrs. Clinton that were in remote storage? What  
13 would cause you to call that to Mr. Kendall's  
14 attention?

15 That is a terribly phrased question.

16 Why did you call to Mr. Kendall's  
17 attention the fact that you had a file listing  
18 retired files of Mrs. Clinton from the Rose Law  
19 Firm?

20 A I think, as I recall mentioning to you  
21 earlier, at whatever point that I was first involved  
22 in this investigation, or whatever it's called, we

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1 were asked to provide anything we had that related to  
2 certain names, certain individuals, certain --

3 Q And that would have been sometime in late  
4 1993 or early 1994?

5 A I think so, because I'm thinking that -- I  
6 don't remember the dates. I don't have any record of  
7 the dates, but I'm thinking that at the first I was  
8 interviewed by FBI agents in 1994, I think, but I  
9 don't remember. I couldn't even tell you which month  
10 it was.

11 Q Did you ever have any conversations with  
12 Ms. Williams about anything having to do with either  
13 Madison Guaranty or Whitewater Development  
14 Corporation?

15 A Absolutely not.

16 Q Did you ever have any conversations with  
17 Mrs. Clinton about anything having to do with the  
18 Whitewater Development Corporation or Madison  
19 Guaranty?

20 A No, sir.

21 Q Have you ever had any conversations with  
22 Ms. Huber about anything having to do with either the

1 Whitewater Development Corporation or Madison  
2 Guaranty?

3 A Only as, you know, just casual  
4 conversation about what we would read in the paper or  
5 see on television, because I see her every day.

6 Q Did she ever discuss with you the fact  
7 that she was involved in trying to collect documents  
8 for Mr. Kendall?

9 A No, sir.

10 Q What I would like to do is show you a  
11 document that we received from Williams & Connally.  
12 This is a copy of a document that was found by Mrs.  
13 Huber in her East Wing office on January 4, 1996. I  
14 believe she testified that she first came upon the  
15 document sometime in August of 1995.

16 This document bears Bates No. DKS N 28928  
17 through DKS N 29043, and it says "Client Billing and  
18 Payment History by Client ID Matter, Rose Law Firm."

19 Could you just take your time and look  
20 through that document? My question is: Have you  
21 ever seen this document before, any of the documents  
22 contained within the entire document, which consists

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1 of a lot of different pages.

2 A Do you want me to look through the whole  
3 document?

4 Q Yes.

5 (Document shown to the witness.)

6 (Pause.)

7 A Repeat the question for me. What I am --

8 Q Have you ever seen these documents before?  
9 It consists of a number of pages which consists of  
10 Rose Law Firm records.

11 Have you ever seen these records?

12 A Okay. I think I can tell you that I have  
13 seen these, or a copy of the same thing, when I  
14 appeared before the Grand Jury under Kennedy Starr's  
15 investigation.

16 Q Prior to the time you were shown the  
17 documents before the Grand Jury, had you ever seen  
18 them before?

19 A I have not seen them in Washington -- now,  
20 let me correct.

21 I've seen -- I saw them when I was before  
22 the Grand Jury.

1 Q Okay.

2 A And then on one occasion since then, I  
3 have had a meeting with Mr. Kollaten (phonetic) who  
4 was the attorney who did most of the questioning  
5 before the Grand Jury. And he had -- I don't know if  
6 what he had was -- I don't remember that he had all of  
7 this at that point, but then I did see some of these  
8 pages. I think it was probably the same pages.

9 Now to further answer your question, I  
10 have not seen any of these documents, or copies of  
11 them, on any occasion since I have been in  
12 Washington.

13 Q Other than when you went to the Grand  
14 Jury.

15 A Correct.

16 Q Now when you were at the Rose Law Firm,  
17 did you ever see these documents?

18 A To say that I saw these actual documents,  
19 I could not say that for sure because I saw many  
20 documents in the course of my work.

21 I understand from the Grand Jury hearing  
22 that a portion of my palm print is somewhere on

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1 this --

2 Q On the first page --

3 A -- first page somewhere.

4 I'd be interested to know where, and what.

5 Q I will provide you that.

6 A Just curiously.

7 Q It's on the front top edge of the right  
8 side, up there (indicating).

9 A Somewhere up here (indicating)?

10 Q Yes.

11 A What portion of my hand?

12 Q One palm print.

13 A One palm print.

14 Q That is why you have the pleasant  
15 experience of having to come here today and having to  
16 see the Grand Jury.

17 A And that is why I get to meet you today.

18 Q I hope it hasn't been too unpleasant.

19 A But if my -- and I'm sure if the tests  
20 indicate that my palmprint is wherever on this piece  
21 of paper, or on the original of this piece of paper,  
22 then I handled them, or touched them, or leaned on a



1 desk where that was, or whatever, however.

2 But to say that I recall it, no, I do not  
3 recall. But I know that I have not seen or touched,  
4 to my knowledge, anything that resembles Rose Law  
5 Firm billing records or statements or any of this  
6 sort of thing since I've been working at the White  
7 House.

8 Q But while you were at the Rose Law Firm,  
9 you would have --

10 A Sure.

11 Q -- you would have seen these types of  
12 documents on a fairly regular basis?

13 A Sure. Correct.

14 Q Were you ever asked while you were at the  
15 Rose Law Firm to print out client billing and payment  
16 histories?

17 A A request of that sort would not have come  
18 to me. It would have gone to the accounting office,  
19 because I did not have in my computer capabilities  
20 printing out anything like this -- or a document of  
21 this sort would have come from the accounting office.

22 Q Do you recall at any time -- probably it

1 would have been in early 1992 -- receiving any billing  
2 materials from either Mr. Hubbell or Mr. Foster to  
3 give to Mrs. Clinton, or perhaps from their  
4 secretaries?

5 A I do not recall that. But, to go further,  
6 if Mr. Hubbell or Mr. Foster asked me to give this,  
7 or a document to Mrs. Clinton, I gave it to her.

8 Q I understand. I understand.

9 A Without question.

10 Q Let's just focus on the period after  
11 Governor Clinton got elected President and before  
12 they moved to Washington.

13 It was during that period that Mrs.  
14 Clinton was presumably packing up her things at the  
15 Rose Law Firm; right?

16 A She was not doing it personally.

17 Q But someone was involved in that process;  
18 right?

19 A Yes.

20 Q Were you involved in that process, in  
21 part?

22 A Now when you're saying "packing up her

1 things," be more specific, please.

2 Q Mrs. Clinton had an office at the Rose  
3 Law Firm; right?

4 A Correct.

5 Q And there were probably items in the  
6 office, pictures of her family, books, knickknacks,  
7 loose papers in the drawer, pens, normal things that  
8 people have in an office; right?

9 A Correct.

10 Q And then you had these files that you  
11 maintained for Mrs. Clinton; right?

12 A Correct.

13 Q And she had some files that related to  
14 probably clients, some relating to personal matters,  
15 some relating to charitable organizations she was  
16 involved in, and straight correspondence that she  
17 would receive from people.

18 Right? Is that right?

19 A Correct.

20 A lot of things related to education  
21 projects, or projects for youth at risk, things that  
22 she did that she was interested in.

1 Q If you could just briefly describe for the  
2 record the process by which Mrs. Clinton -- the  
3 contents of Mrs. Clinton's office that were packed up  
4 or either sent to storage, sent to the mansion, sent  
5 to Washington, and when that process began.

6 A I do not recall the date that the process  
7 began. I am thinking it probably didn't happen until  
8 in January.

9 Q So she was still operating out of the Rose  
10 Law Firm at least to some extent?

11 A There was still an office there --

12 Q That she was using.

13 A -- that was Hillary Rodham Clinton's  
14 office.

15 The items that were in her office, in the  
16 room of her office, were packed and moved to the  
17 Governor's Mansion by a moving business.

18 Q Did she have file cabinets in her office?

19 A No, sir. There were no file cabinets in  
20 her office.

21 All of the file cabinets were in the area  
22 of my desk.

1 Q Did she have any credenzas where you could  
2 keep documents in an office?

3 A She had a credenza, but she did not keep  
4 files in it. She had a couple of book cases, and her  
5 desk was an antique table that had no drawers, no  
6 file drawers or anything, just the table she uses for  
7 her desk in the White House.

8 So all of the things in her office, all  
9 personal things, lamps, wall hangings, tables, a sofa  
10 chair, were packed by a professional mover and moved  
11 to the Governor's Mansion to be included with their  
12 personal things that were being moved to Washington.

13 Q Were any documents moved to the Governor's  
14 Mansion?

15 A She did not keep that sort of thing in her  
16 office.

17 Q So that we know about the two boxes that  
18 were shipped by Amy Stewart.

19 Correct?

20 A Correct.

21 Q Then you had the Rose Law Firm client  
22 files that were --

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1 A Correct.

2 Q And what happened to those?

3 A The Rose Law Firm client files were  
4 distributed -- one of two things. They were either  
5 retired or distributed to other attorneys in the firm  
6 for ongoing representation.

7 Those designations were provided me  
8 by Web Hubbell. If there was another attorney, one  
9 of the associates working with Mrs. Clinton on a  
10 file, then that attorney would receive that client's  
11 file.

12 Q So Mr. Hubbell had a role in winding down  
13 Mrs. Clinton's affairs at the Rose Law Firm?

14 A In determining who would have the ongoing  
15 representation for the various clients.

16 Q Do you recall Mr. Hubbell reviewing any of  
17 the files that you maintained for Mrs. Clinton?

18 A No, sir.

19 Q Did you discuss with Mr. Hubbell the files  
20 you maintained for Mrs. Clinton?

21 A In this distribution.

22 Q So did he come see you and say, you know,

1 Mrs. Alston, here are the files for ABC Corporation,  
2 they should go to Lawyer Jones.

3 This is XYZ, they should go to --

4 A Correct.

5 And then if there were some that were in  
6 the filing cabinet that were inactive, they were  
7 indexed and sent to remote storage.

8 These were all the Rose Law Firm files.

9 Then we had, which we referred to earlier,  
10 the personal files, which involved organizations  
11 she worked with, some personal correspondence, that  
12 were left in Amy Stewart's office to be disposed of  
13 later.

14 Q Do you recall approximately how many boxes  
15 there were --

16 MR. SCHUELKE: Of what?

17 BY MR. GIUFFRA: (Resuming)

18 Q -- of personal files that would have gone  
19 to Amy Stewart?

20 A No, sir.

21 There were probably -- I can't even remember  
22 how many drawers it would be. Probably three or four

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1 full-sized file drawers.

2 Q And we know that the two boxes at least  
3 made their way to Washington; right?

4 A Correct.

5 Q Do you know what happened to the other  
6 boxes, or the remaining documents?

7 A (Pause.)

8 Mrs. Clinton made a -- reviewed the list of  
9 the files that had been left at the Rose Firm --

10 Q Do you recall when this was?

11 A When it was?

12 Q (Nods in the affirmative.)

13 A Probably in February of 1993, soon after  
14 we got here.

15 And she indicated on that list whether  
16 they were to be -- which ones she wanted sent to her.  
17 And as I recall, the designation on the list was I  
18 had asked her to designate whether she wanted them  
19 forwarded to her, or to be destroyed, or to be sent  
20 to remote for storage.

21 I think she said none of these would go to  
22 remote because they were not Rose Law Firm files.



1 And then she indicated by each item on the list an  
2 "F" or a "D", "F" for "Forward," "D" for "Destroy."  
3 And the ones that had an "F" were shipped here. That  
4 would be the two boxes of files that were shipped to  
5 me.

6 Q And the Whitewater file would have been  
7 included among them?

8 A Probably it was.

9 Q Do you know why the Whitewater file was  
10 included? Did you actually see it when you looked  
11 through the box when you got it in Washington?

12 A No, sir. I had no curiosity.

13 Q Why do you believe the Whitewater file was  
14 included among the files that were shipped from  
15 Little Rock to Washington?

16 A I have no idea -- because these were files,  
17 these were personal files of hers, and she made the  
18 decision.

19 MR. SCHUELKE: No. His question is: Do  
20 you know that in fact that file was shipped to  
21 Washington?

22 Right?

1 BY MR. GIUFFRA: (Resuming)

2 Q Yes. That is the question.

3 MR. SCHUELKE: Not why she decided to  
4 retain it.

5 THE WITNESS: Okay. Do I know if that  
6 file was included?

7 BY MR. GIUFFRA: (Resuming)

8 Q Yes.

9 You had previously testified I think that  
10 you did, that it was included.

11 A Okay. And I think that testimony is based  
12 on the fact that I had had that list that indicated  
13 it was.

14 Q So you recall seeing that she had written  
15 "forward" next to "Whitewater" on the list you  
16 provided to her?

17 A I think so.

18 Q Have you subsequently -- have you seen this  
19 list recently, within the past two years?

20 A The list?

21 Q Yes.

22 A I have a copy of it in my office.

1 Q Have you looked at -- Have you looked at  
2 it any time recently, in the last couple of years,  
3 and determined that she'd written "forward" next to  
4 the Whitewater Development Corporation file listed?

5 A (Pause.)

6 Let me try again.

7 In preparing for grand juries and the  
8 meetings with various people about Whitewater and  
9 these investigations, have you ever gone back and  
10 looked at the list to see what Mrs. Clinton did with  
11 that file?

12 A I have looked at the list, and I think the  
13 fact that I am thinking Whitewater was forwarded here  
14 is that it was included in the files that were  
15 forwarded.

16 Q Based on her --

17 A Based on that --

18 Q -- what she had written there?

19 A -- on her designation for what should be  
20 done with those files.

21 Q Okay.

22 Now Is it possible that the document, the

1 Rose Law Firm billing materials that I showed you  
2 just before, could have been included among the two  
3 boxes of documents that were shipped from the Rose  
4 Law Firm to the White House?

5 MR. SCHUELKE: What do you mean by "is it  
6 possible"?

7 THE WITNESS: Ummm --

8 MR. SCHUELKE: I don't want you to  
9 speculate about possibilities.

10 Ask her a question she can answer.

11 BY MR. GIUFFRA: (Resuming)

12 Q You don't know whether it was shipped  
13 from Washington --

14 A No, sir, I do not.

15 Q -- to Little Rock within these two boxes of  
16 documents?

17 A I don't know.

18 Q You do not know one way or the other.

19 A I do know know.

20 Q One way or the other?

21 A I do not. That's correct. I do not know  
22 if that document was in the box.

1 Q Have you ever discussed the discovery of  
2 these Rose Law Firm billing records with Mrs.  
3 Huber?

4 A Not except just casual conversation that  
5 you'd, you know, just with anybody in the office  
6 you'd be working with.

7 Q Has Mrs. Huber ever said anything to you  
8 about her belief as to how the documents found their  
9 way to the White House residence?

10 A No, sir.

11 Q Have you ever discussed the discovery of  
12 these records with Mrs. Clinton?

13 A Absolutely not.

14 Q Maggie Williams?

15 A No, sir.

16 Q Do you recall seeing Mr. Hubbell remove  
17 any files from Mrs. Clinton's file cabinets at the  
18 Rose Law Firm in that period, you know, after the  
19 election but before the Clintons moved to  
20 Washington?

21 A No, sir, I don't.

22 Q But he was involved in the process of

1 directing where the files would go?

2 A Yes.

3 MR. SCHUELKE: The client files.

4 THE WITNESS: The law firm's files.

5 BY MR. GIUFFRA: (Resuming)

6 Q Did he ever look through those files in  
7 your presence?

8 A You mean come to my file cabinets and look  
9 through the files?

10 Q Yes.

11 A No, sir.

12 MR. GIUFFRA: Could we take a break for  
13 just one second?

14 THE WITNESS: Sure.

15 (Recess.)

16 MR. GIUFFRA: Back on the record.

17 BY MR. GIUFFRA: (Resuming)

18 Q Just a few more questions and I will be  
19 done.

20 Did Mrs. Clinton maintain an office at the  
21 Governor's Mansion?

22 A As far as maintaining an office, not that

1 I'm aware of.

2 Q Did she maintain files or documents at the  
3 mansion?

4 A Not that I'm aware of.

5 Q You mentioned the instance in which you  
6 went to the room in the residence and you tried to  
7 get a letter that Chelsea had written to President  
8 Reagan.

9 Do you recall that?

10 A Yes.

11 Q That room contains some personal papers of  
12 the Clintons; right?

13 A Yes, sir.

14 Q Do you recall anything more about what  
15 type of documents would be in that room in the White  
16 House residence?

17 A As I recall -- well, I think it was just  
18 like personal memorabilia type things.

19 Q You don't recall that being the same room  
20 as the Book Room.

21 A No, sir, as I understand -- and this is  
22 probably from television, whatever -- the Book Room is

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1 maybe adjacent to the office?

2 Q It is near the office.

3 A Maybe at a right-angle to it. I'm not  
4 sure. That's where I understand the Book Room  
5 is.

6 This closet was at the -- on the north side  
7 of the residence. I would suppose on the north wall  
8 of the residence near the center.

9 Q Do you recall approximately how big the  
10 closet was?

11 A It was a walk-in closet, with shelves on  
12 both sides. That's all that was there was the closet  
13 with shelves in it.

14 Q And the boxes on the shelves?

15 A Correct. And the shelves were not full.

16 Q Do you know how those documents, or  
17 those boxes found their way from Little Rock to  
18 Washington?

19 A No, sir.

20 Q So that if Mrs. Clinton had documents at  
21 the mansion, you don't know how those documents would  
22 have been shipped to Washington?



1           A     Whatever she had at the mansion was moved  
2 by the professional movers that moved all their  
3 personal possessions.

4                As I recall, the things that I saw in that  
5 room as I was looking for that letter, in the absence  
6 of Carolyn Huber and in the absence of the Clintons --  
7 they were all out of town -- all I saw was like  
8 personal memorabilia: photographs, things of that  
9 sort.

10           MR. GIUFFRA: Well thank you very much. I  
11 really appreciate it.

12                I do not have any further questions, but I  
13 don't know if Glen does?

14           MR. IVEY: No, I don't have any questions.  
15 Thank you for your time.

16           MR. GIUFFRA: We appreciate your time.

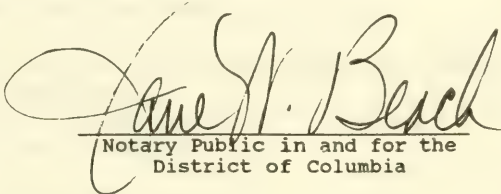
17           MR. SCHUELKE: Well, we thank you all for  
18 your hospitality.

19                (Whereupon, at 12:30 o'clock p.m., Friday,  
20 June 7, 1996, the deposition of Mildred C. Alston was  
21 adjourned.)  
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JANE W. BEACH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Jane W. Beach  
Notary Public in and for the  
District of Columbia

My Commission Expires NOVEMBER 14, 1996



**DEPOSITION OF BRUCE R. LINDSEY  
IN RE: S. RES. 120**

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**SATURDAY, JUNE 8, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of BRUCE R. LINDSEY, called for examination pursuant to notice of deposition, at 9:30 a.m. in Room 538 of the Dirksen Senate Office Building, before SHEILA M. LYONS, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.  
Majority Chief Counsel  
RICHARD BEN-VENISTE, Esq.  
Minority Special Counsel  
NEAL E. KRAVITZ, Esq.  
Minority Principal Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

ALLEN R. SNYDER, Esq.  
Hogan & Hartson  
555 Thirteenth Street, NW  
Washington, DC 20004  
On behalf of the Deponent.



## CONTENTS

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WITNESS

EXAMINATION

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## PROCEEDINGS

Whereupon,

BRUCE R. LINDSEY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

## EXAMINATION

BY MR. GIUFFRA:

Q Good morning, Mr. Lindsey. As you know my name is Robert Giuffra. I'm the chief counsel of the Senate Banking Committee. To my left is Doug Nappi, counsel to the Senate Banking Committee, and farther down is Neal Kravitz, who is principal minority deputy special counsel of the Whitewater Committee. Let's get that right. Principal deputy, Democratic special counsel.

This is a deposition that is being conducted pursuant to Senate Resolution 120. This resolution establishes a special Committee administered by the Banking Committee to conduct the investigation into, among other things, Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc.,

4

the Arkansas Development Finance Authority, and lending activities of the Perryville County Bank in connection with the 1990 Arkansas gubernatorial election. Now you have previously been a witness before. Do you want me to go through the preamble again?

A No, sir.

Q The only thing I would say for the record is that no decision has been made as to whether you will be called to testify this week. Although there are only a limited number of days left for the Committee until the 14th, and your testimony here today would either be incorporated into the reports the Committee will issue on or about June 17, 1996 or could be held for release at some later date. Any questions?

A Not from me.

Q Mr. Lindsey, you were the contact person at the White House with regard to press inquiries concerning the Whitewater matter in the fourth quarter of 1993; correct?

A Probably. I was clearly the person to

1 answer most of the questions. I may have contacted  
2 the President or someone else.

3 Q What is your understanding of the transfer  
4 of the actual Whitewater land to Whitewater  
5 Development Corporation?

6 A My understanding is the land was owned by  
7 the Clintons and McDougals and then it was  
8 transferred to the corporation at some point in the  
9 later 1970s.

10 MR. SNYDER: Let me interrupt briefly. If  
11 this question relates in some fashion to one of the  
12 documents that Mr. Lindsey recently provided to you,  
13 then we have no objection to your asking questions  
14 about the newly provided documents, but I trust we  
15 are not here to basically talk about the whole  
16 Whitewater transaction.

17 MR. GIUFFRA: I have two very brief sets of  
18 questions.

19 MR. SNYDER: Does this relate in some  
20 fashion to these newly discovered documents?

21 MR. GIUFFRA: No. I don't think we have  
22 ever asked him about this particular question.

1 MR. SNYDER: Well, let's proceed, but I  
2 think we don't want to retread the whole ground here,  
3 since that wasn't my understanding of the purpose of  
4 the deposition.

5 (Discussion off the record.)

6 MR. SNYDER: Back on the record.

7 THE WITNESS: My personal knowledge of  
8 that?

9 BY MR. GIUFFRA:

10 Q No, what you have been told or you  
11 personally. You can distinguish between the two.

12 A Well, I don't have any personal knowledge.  
13 My understanding is that at some point the property  
14 was originally purchased in their names and that at  
15 some point thereafter when the Whitewater Development  
16 Company was formed, that the property was transferred  
17 to the corporation, but again that is basically all I  
18 know about it.

19 Q Do you know anything further about the  
20 terms and conditions surrounding the transfers of the  
21 Whitewater land to the corporation.

22 A No.

1 Q Let's go off the record.

2 (Discussion off the record.)

3 BY MR. GIUFFRA:

4 Q Now, in connection with the initial

5 acquisition of the Whitewater land, the Clintons and

6 McDougals took out loans from Citizens Bank of

7 Flippin and Union Bank; correct?

8 A Yes.

9 Q Now, in connection with the transfer of the

10 land from the Clintons and McDougals to Whitewater

11 Development Corporation, did Whitewater Development

12 Corporation issue identical mirror loans; i.e., loans

13 which mirrored the terms and conditions of the

14 Citizens Bank of Flippin and Union Bank loans to the

15 Clintons and McDougals?

16 A Were there actual documents that reflect

17 the loans?

18 Q Yes.

19 A Not that I know of, but there could have

20 been, but I'm not aware of any.

21 Q What is your understanding of the so-called

22 mirror loans?

1 A Well, actually, the question of mirror

2 loans that I have been involved with actually came up

3 with respect to lot 13, and the question of interest

4 payments on lot 13. I don't know. If I remember

5 right the land was transferred to the corporation,

6 but I believe at least initially the debt was not,

7 and there was some reference in some document that at

8 some point later on Whitewater Development Company

9 may have been listed on one of the bank loans, either

10 in place of the Clintons or in addition to the

11 Clintons. I don't know if I know the answer to that,

12 but I don't know that there was a mirror loan

13 document, although they transferred the land in, and

14 my understanding is, again, that at least on the

15 books of Whitewater the debt was reflected.

16 Q But you don't know of any, the loans, the

17 Citizens Bank of Flippin loan and the Union Bank

18 loan, those remained debts of the Clintons and

19 McDougals after the transfer of the property?

20 A Correct.

21 Q And whether, as far as you know Whitewater

22 did not, Development Corporation, did not issue



1 identical mirror loan documents to the Clintons and  
2 McDougals in connection with the transfer of the  
3 land?

4 A Right. I do not. I don't know if I have  
5 ever seen or been told that there were documents  
6 reflecting the lending of the money from the  
7 McDougals, or lending of the debt, I guess, from the  
8 McDougals and Clintons to Whitewater.

9 Q And then a document --

10 A Right, that reflects that.

11 Q Okay.

12 (Discussion off the record.)

13 BY MR. GIUFFRA:

14 Q Attached are documents, I have shown you  
15 some documents that are an attachment to a letter  
16 dated March 1, 1996 from Mr. Snyder to me. I don't  
17 believe these documents have been Bates stamped. It  
18 just says Attachment A. It has three pages to it. I  
19 will just refer to them that way. Mr. Lindsey, what  
20 are these documents?

21 A These appear to be my notes of what has  
22 been called the lawyers meeting that occurred in

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10

1 November of 1993.

2 Q There is a reference on page 1 to  
3 "campaign/Jim Lyons and Loretta Lynch."

4 A I think we were talking about, I think that  
5 Jim Lyons, Loretta Lynch, we were talking about  
6 sources who would have information about these  
7 various subjects. Again, you would almost have to  
8 compare these with Kennedy's notes, which obviously  
9 were much more detailed, but I think these were three  
10 of the areas that we were going in, trying to bring  
11 David Kendall and others up to speed.

12 These were things we were going to talk  
13 about and Jim Lyons and Loretta Lynch were people who  
14 had knowledge about what happened during the campaign  
15 with respect to Whitewater and the Rose law firm.

16 Q Do you know whether anyone subsequently  
17 spoke to Jim Lyons and Loretta Lynch?

18 A Jim Lyons was at the -- Loretta Lynch and  
19 Jim Lyons spoke extensively at the meeting. Most of  
20 the notes beyond the first page I believe are while  
21 he was speaking. I don't know whether anyone spoke  
22 to Loretta Lynch or not.

1 Q And the reference to David Hale at the  
2 beginning of the top of the page?

3 A Again, I think that the areas we were going  
4 to explore in trying to bring -- you need to go  
5 back. David Kendall was just now coming on board. I  
6 don't know whether or not the Justice Department at  
7 this point had announced their investigation or not,  
8 but David Kendall and Steve Engstrom at that time,  
9 although ultimately he did not, were coming on board,  
10 and these were the topics that we were going to go  
11 over and bring them up to speed with respect to what  
12 knowledge various people at the meeting had with  
13 respect to these subjects.

14 So the "David Hale" is a reference to  
15 basically my conversation, or that is part of the  
16 information that Jeff Gerth basically imparted to me  
17 in a meeting in early October.

18 Q And the next section says, "RTC dollar  
19 campaign." What does that refer to?

20 A Again, I think this refers to, and several  
21 days before there had been the story, the story in  
22 The Washington Post, like the 1st of November, about

12

1 that the RTC was looking at money that went into the  
2 1984 Clinton campaign and the source of funds for  
3 these dollars, those contributions.

4 Q All right. The next page of Attachment A  
5 is just a recitation of various transactions relating  
6 to Whitewater Development Corporation?

7 A Right. If I remember the way the  
8 conversation went, we sort of started and I think I  
9 talked for a while and there are multiple notes that  
10 Bill Kennedy had of, I think where I was sort of  
11 principal speaker. At some point we switched to  
12 going through the Whitewater Development Corporation  
13 transaction, which Jim Lyons probably has more  
14 detailed information than I did, since he had  
15 prepared the Lyons report, and as I have told you  
16 before, I don't tend to both talk and take notes. So  
17 while I'm talking there were not notes of what I  
18 said, but basically when I quit talking and Jim Lyons  
19 started talking, I started jotting down notes, and  
20 those are my notes of his going through the  
21 transactions.

22 Q Okay, let's turn to Attachment B.

1 A I don't know quite what Attachment B is.

2 Q The last thing, where it says "Bill  
3 Kennedy."

4 A Yes.

5 Q According to your Counsel this is a  
6 separate conversation. This is in a cover letter  
7 from Mr. Snyder to me dated March 1, 1996.

8 A Okay.

9 Q Maybe it would be good if you go through  
10 and just read these notes and what they mean to you.

11 A "Bill Kennedy," then underneath, "Randy  
12 Coleman, telephone call," then a dash, "Hale formed a  
13 mortgage company, used by Madison Guaranty to 'park'  
14 loans, assist with regulators. One of loans that was  
15 'parked' was Whitewater. Jim Guy Tucker similarly  
16 situated," and then, "Web has Whitewater records.  
17 Web never heard of Hale or company." Then below  
18 this, "Jim Lyons," underneath that "Madison  
19 Marketing, loan or contribution," and then below that  
20 "Paragould, Perryville" and then a line.

21 Q Okay. Now, do you know when you prepared  
22 this single page of notes that we will call

1 Attachment B that is in Mr. Snyder's letter to me of  
2 March 1, 1996?

3 A My best guess is that shortly after Jeff  
4 Gerth came and related to me the David Hale story.

5 Q So that is September, 1993?

6 A Late September or early October, I don't  
7 remember which. He basically told me, I think, that  
8 Randy Coleman had told him that he had contacted  
9 Kennedy. This is a reference in those notes to  
10 Madison Marketing or Master Marketing. Sometimes,  
11 it's, apparently there are two different entities.

12 Q Are you referring to the notes we will call  
13 Attachment B, or are you referring to your notes of  
14 the conversation with Mr. Gerth?

15 A No, he mentioned all these subjects. I was  
16 trying to follow up and find out what I could find  
17 out about it. So he mentioned to me that Randy  
18 Coleman had had a conversation with Bill Kennedy. I  
19 believe the first part of this is I called Bill  
20 Kennedy. Now whether I did it that day, the  
21 following week, I can't tell you specifically, but it  
22 was shortly after that, and said, "Did you have a

1 conversation with Randy Coleman," and the first part  
2 of this is, I believe, what Bill Kennedy related to  
3 me with respect to his conversation with Randy  
4 Coleman.

5 I think basically if you sort of stop with  
6 the first four points, then there is a gap, "Web has  
7 Whitewater records." I think he then told me after  
8 his conversation he checked with Web, who had the  
9 records, and that Web never, I'm sure Web had heard  
10 of him, but there is nothing in those records that  
11 would reflect what David Hale was saying, or at least  
12 Web wasn't aware there was anything in those  
13 records.

14 Q So it's your understanding after  
15 Mr. Coleman -- strike that. After Mr. Kennedy spoke  
16 to Mr. Coleman, he called Mr. Hubbell and Mr. Hubbell  
17 advised Mr. Kennedy that Mr. Hubbell had certain  
18 Whitewater reports?

19 A I think that is right, yes.

20 Q And then that --

21 A I don't know whether he advised him of  
22 that, but I think Bill knew that.

1 Q Do you have an understanding that  
2 Mr. Hubbell then examined some of the Whitewater  
3 records or all the Whitewater records that he had in  
4 his possession to ascertain whether there was a  
5 reference within those records to David Hale?

6 A No, I don't know that. I don't think I  
7 understood that. I think he said, you know,  
8 "Randy" -- I'm making up the conversation, because  
9 I don't know, but he said something like "Randy  
10 Coleman says" --

11 Q You were party to the conversation with  
12 Mr. Kennedy; right?

13 A Right, but I don't know what the  
14 conversation was. I think that Bill had some sort of  
15 conversation with Randy Coleman, called, said he  
16 represents David Hale. David Hale says that he  
17 somehow had something to do with Whitewater, that he  
18 parked the loan, and Web said, "I don't think there  
19 is any reference." I don't have any sense that he  
20 went back and did an independent review of the  
21 records to determine that. I think that was just, "I  
22 have the records. I don't think I have ever seen



1 David Hale's name or David Hale's company in the  
2 records." Now again, I don't have that.

3 The only point is I didn't understand at  
4 the time that that was, that he went back and did an  
5 independent search to determine that. Now, the Jim  
6 Lyons, I think is a separate conversation. Again I  
7 think I asked him, because there was this reference  
8 to Master Marketing or Madison Marketing, whether or  
9 not that was reflected in the Whitewater document  
10 records, and I don't know if you remember, but one  
11 time there was a sort of a single sheet that  
12 reflected Madison Marketing and money in and money  
13 out, and I couldn't quite remember where that came  
14 from or what, but I think what happened was when I  
15 asked him that question, you know, did Madison  
16 Marketing put either loans or contribute money to  
17 Whitewater, I think he went back and had the  
18 accountants pull out the Madison Marketing or the  
19 Master Marketing transaction and reflect those on a  
20 sheet.

21 I don't know about "Paragould, Perryville."  
22 Paragould obviously is where we had a loan, where the

---

1 lot 13 loan ultimately ended up. I don't know what  
2 "Perryville" means.

3 Q Perryville presumably would mean the bank  
4 of Perry County?

5 A I don't know whether or not, I don't know  
6 that.

7 Q Can you think of anything that it would  
8 refer to?

9 A Yes. What I actually think is that Jim  
10 Lyons couldn't remember whether it was Paragould or  
11 Perryville at the time and I wrote them both down.

12 Q Let's go to the first conversation with  
13 Mr. Kennedy again.

14 A Okay.

15 Q So Mr. Kennedy advised you that he had been  
16 told by Mr. Coleman that Hale had used Madison  
17 Guaranty to "park" loans?

18 A I think that is what he told me. That is  
19 what I wrote down. I don't remember the  
20 conversation, but that is what I wrote down.

21 Q What was your understanding of what he  
22 meant, to "park" loans?

1       A    I'm trying to remember if I had any. I  
2 don't know whether I would have understood at the  
3 time. My understanding of "park" loans is that you  
4 take loans and you move them over here to get them  
5 off one person's books. Maybe that is what it means,  
6 that it would assist with regulators, that he was  
7 saying there were Whitewater loans that they moved  
8 off the Whitewater books -- excuse me, Madison  
9 Guaranty loans, Madison Guaranty loans they moved off  
10 the Madison books so that when the regulators came in  
11 they wouldn't be there, and they parked them over  
12 with Hale's company. It's not quite what Hale has  
13 testified happened, but I think that would have been  
14 what I would have thought at the time.

15       Q    And then he advised you, this is Kennedy,  
16 that based on his conversation with Coleman, that one  
17 of the loans that had been parked by Mr. Hale was  
18 some sort of a Whitewater loan?

19       A    Apparently, yes.

20       Q    Do you recall anything more about that?

21       A    No.

22       Q    Now, there is a reference to Jim Guy Tucker

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20

1 and it says "similarly situated." What was the  
2 reference, what did that reference mean?

3       A    Again, I'm speculating, sort of, from this,  
4 that he said Jim Guy Tucker had similar problems or  
5 he is similarly situated. Again, this is what  
6 Coleman was telling Kennedy.

7       Q    That some of, some loans that Jim Guy  
8 Tucker had were also parked with Mr. Hale?

9       A    I guess. I'm not sure if we went into that  
10 much detail. The first time I heard of any sort of  
11 Kennedy/Coleman conversation was from Gerth, and I  
12 was just trying to find out did he have such a  
13 conversation and what was said.

14       Q    Okay. Now, during the 1992 presidential  
15 campaign, did you ever have any conversations with  
16 then Governor Clinton about seeking information from  
17 Jim Guy Tucker -- strike that.

18       A    During the 1992 campaign, did you have any  
19 discussions with Governor Clinton about contacting  
20 Jim Guy Tucker in connection with trying to respond  
21 to press inquiries about Whitewater?

22       A    Not that I recall.

1 Q Now, you are aware there is a note that  
2 Susan Thomas has produced to the Committee in which  
3 she indicates that Jim Guy Tucker might be somewhat,  
4 she has been told that Jim Guy Tucker might be  
5 somewhat, might be someone who has knowledge about  
6 Whitewater.

7 A Is that the way the notes read?

8 Q Let's go off the record.

9 (Discussion off the record.)

10 BY MR. GIUFFRA:

11 Q Her notes make reference to Jim Guy  
12 Tucker.

13 A Right.

14 Q What is your understanding of what  
15 Ms. Thomas was referring to?

16 A I don't know.

17 Q Did you ever discuss Jim Guy Tucker with  
18 Ms. Thomas during the 1992 campaign?

19 A I don't think so.

20 Q Have you ever had any discussions of any  
21 kind with Jim Guy Tucker with regard to anything  
22 having to do with Whitewater Development Corporation?

---

22

1 A No.

2 Q Madison Guaranty Savings and Loan  
3 Association?

4 A No.

5 Q Capital Management Services?

6 A No.

7 Q David Hale?

8 A No.

9 Q RTC criminal referrals?

10 A No.

11 Q So after you had been advised by  
12 Mr. Kennedy --

13 (Witness conferred with counsel.)

14 BY MR. GIUFFRA:

15 Q Do you have anything else you would like to  
16 add?

17 A No.

18 Q Do you have any understanding as to whether  
19 anybody who was involved with the 1992 presidential  
20 campaign ever contacted Jim Guy Tucker in trying to  
21 obtain information relating to either Jim McDougal,  
22 Whitewater, Madison Guaranty, David Hale?

1 A No.

2 Q Do you have any understanding as to whether  
3 anybody at the White House ever contacted Jim Guy  
4 Tucker seeking information about either Whitewater  
5 Development Corporation, Madison Guaranty, David  
6 Hale, Jim McDougal, Capital Management Services?

7 A No. I mean, I had a conversation with his  
8 staff to ascertain at the time that there was a  
9 report of Clinton and Tucker meeting. I asked both  
10 the President and Jim Guy Tucker's staff whether or  
11 not any of these subjects came up, because I was  
12 asked to do that by the reporter, and they both  
13 indicated to me that they didn't.

14 Q This is the October 6, 1993 meeting?

15 A Right. So again, to the extent that that  
16 relates to the referrals, I didn't have a  
17 conversation with him. I had a conversation with his  
18 staff and was advised that the subject never came  
19 up.

20 Q Do you have any understanding as to whether  
21 Governor Clinton and Jim Guy Tucker were ever alone  
22 during the meeting on October 6?

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24

1 A I have no personal knowledge of that. My  
2 understanding from the person, Keith, whatever --

3 Q The presidential assistant?

4 A That was there, I think he said he was  
5 there during the entire meeting in that memo, but I  
6 don't have any personal understanding.

7 Q Just so the record is clear, during the '92  
8 campaign and also to include the Washington part of  
9 this, do you know whether anyone from either the  
10 White House or from the presidential campaign  
11 contacted any agent, employee, associate of Jim Guy  
12 Tucker trying to get information about either  
13 Whitewater Development Corporation, Madison Guaranty,  
14 David Hale, Capital Management Services or Jim  
15 McDougal?

16 A No.

17 Q Do you have any understanding as to whether  
18 on or about October 6, 1993 Webster Hubbell met with  
19 Governor Tucker?

20 A What was your question? I'm sorry.

21 (The record was read as requested.)

22 THE WITNESS: The answer is I don't know



1 whether he met with him or not. Do I have any  
2 understanding, I believe I have read somewhere that  
3 there was some sort of a note that, either to Web or  
4 on his telephone logs that reflected that Tucker was  
5 in town or something, but I don't have any idea  
6 whether they met and, in fact, I think, I believe I  
7 heard Hubbell testify that they didn't, but I'm  
8 trying to recall that from my memory, but I have no  
9 direct knowledge of it.

10 Q Have you ever had any conversations with  
11 Mr. Hubbell about Jim McDougal, Whitewater  
12 Development Corporation, Madison Guaranty, David  
13 Hale, Capital Management Services?

14 A No. I mean, no, I don't think so. No  
15 substantive conversations.

16 Q When you say substantive conversations,  
17 what do you mean by that?

18 A Well, I have probably expressed concern for  
19 what Web has gone through and for Web, so to the  
20 extent that that is about these matters, but we have  
21 never talked about the substance of any of these  
22 matters.

1 Q Let me show you some more documents. These  
2 are new documents. They have Bates number BL 6496  
3 and appears to be a fax to you from Archie Schaffer.

4 MR. KRAVITZ: Do you know which production  
5 that was so I can find it?

6 MR. GIUFFRA: Off the record.

7 (Discussion off the record.)

8 THE WITNESS: This is a cover sheet dated  
9 1/7/94 to me from Archie Schaffer III on Tyson's fax  
10 transmittal sheet with some handwritten notes at the  
11 bottom, which are mine. I have actually, I think  
12 testified about this in the hearing, but I will  
13 testify again.

14 BY MR. GIUFFRA:

15 Q We wouldn't want you to do that. So is  
16 this just another copy of a document the Committee  
17 already received?

18 A I think so. Up here it says, "number of  
19 pages 3." I think there was a two-page letter from  
20 Gerth to Jim Blair. I think Jim Blair was in London  
21 when this letter came in. The letter refers to Jim  
22 McDougal believes that he, I don't want to

1 characterize the letter, but it was, it was based,  
2 seemed to me on a conversation Gerth had with  
3 McDougal and he was following up with Blair. Blair I  
4 believe had Archie fax me the letter because he  
5 wasn't in Fayetteville or wherever, Springdale, where  
6 the letter came in to. Then I had a conversation  
7 with him in which he sort of talked about it and I  
8 think these notes down here reflect my conversation  
9 with Jim Blair, and if you saw the letter that was  
10 attached to this, another version, I think it would  
11 track. I think we were going through the allegations  
12 in the letter, and this sort of tracks the  
13 allegations or the comments in the letter.

14 Q Okay. The Committee did not have the cover  
15 sheet, though, when you were examined previously?

16 A Could be.

17 Q Why don't we go through the one sheet.

18 A I don't believe that is right, because I  
19 think I have gone through these notes, but "HRC,"  
20 "counsel to the Clintons," "liable suit,"  
21 "absolutely true," "letter not sure," "will check,"  
22 "explain to Sam," "trial acquittal," "why would we,"

1 I think that is a "B," looks like "buy," but "talking  
2 to the press," "be reindicted, not in his interest."

3 MR. SNYDER: Let me clarify this. I think  
4 the Committee had another copy of this same document  
5 from a different source. They didn't have  
6 Mr. Lindsey's copy, but I think they had a copy with  
7 the same materials on it.

8 MR. KRAVITZ: I believe that is correct.  
9 Actually I remember Mr. Lindsey testifying about that  
10 before.

11 THE WITNESS: Yes, but again, if you follow  
12 the letter, those were my asking him about the  
13 allegations in the letter and his comments to me  
14 back.

15 BY MR. GIUFFRA:

16 Q Let me ask you -- let me show you another  
17 document bearing Bates number BL 6116, and BL 6117.  
18 I believe this is a newly produced document since you  
19 last testified. Do you recall when you prepared  
20 these notes?

21 A No, but it would have been, again, I think  
22 after, shortly after, probably the Jeff Gerth

1 conversation.

2 Q So some time in September, October, 1993?

3 A Could be as far up as November, but  
4 probably October, yes.

5 Q And this is a conversation you had with  
6 Mr. Lyons?

7 A Appears to be, yes.

8 Q Does this reflect a conversation with  
9 anyone else besides Mr. Lyons?

10 A Again, "telephone conversation with Jim  
11 Lyons" is at the top. There is no other reference,  
12 so I assume all of this, I assume this is the front  
13 and back of one of my wonderful cards, but I don't  
14 have any basis for believing that it was anybody  
15 else.

16 Q Okay. Why don't you just read through the  
17 notes that we have and what they mean to you as you  
18 go through them.

19 A "Telephone conversation with Jim Lyons."  
20 "Jim Blair." Maybe I told Lyons that I had talked  
21 to Blair. I don't know. I don't know. "John  
22 Tisdale, real estate corporate," at some point when I

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1 heard for the first time that some property in the  
2 name of Whitewater had been bought in Pulaski County  
3 or south Pulaski County, I asked John Tisdale, who is  
4 a lawyer in my former law firm, to go back and check  
5 the real estate and corporate records in Pulaski  
6 County to determine whether or not there was  
7 reflected a deed or property that was bought in the  
8 name of Whitewater. Again, no one as far as I know  
9 knew until I heard it from Jeff Gerth about the, what  
10 is now known as the International Paper property.  
11 Then it says "Isikoff, Heuer, Blair's." I don't know  
12 what that means.

13 Q Isikoff is Michael Isikoff?

14 A Heuer is Sam Heuer. Blair is probably Jim  
15 Blair, but I don't know, I don't know whether that  
16 means Isikoff talked to Heuer, who talked to Blair.  
17 I don't know what the three words there mean, they  
18 don't mean anything to me today. IP is International  
19 Paper, I assume. "Mistake, put into wrong company.  
20 Once realized had it transferred to Great Southern."

21 Q One question. This appears to be outside.  
22 I think it does fit on the card.

1 A The border is on the inside of the paper.

2 MR. KRAVITZ: So that this makes a little  
3 sense, I think that what Bob was referring to was the  
4 fact that on BL 006116, which is a Xerox of a card  
5 that says the "White House" on the top, there appears  
6 to be handwritten, some handwriting that goes outside  
7 the border of the card. And what Mr. Lindsey has  
8 done is shown us another page of a similar White  
9 House card which shows that the written border is  
10 actually a quarter or half inch inside the edge of  
11 the piece of paper.

12 THE WITNESS: It also reflects why the  
13 second page, which is probably the back, appears to  
14 be larger than the first page, and that is because on  
15 the back there is no border.

16 BY MR. GIUFFRA:

17 Q Let's go back to the document.

18 A International Paper. One of the  
19 explanations I was given at one time, I was given two  
20 different explanations as to why the property was  
21 bought in the name of International -- or bought in  
22 the name of Whitewater.

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1 Q Who gave you these explanations?

2 A I think probably Blair, who I think got it  
3 from Sam Heuer.

4 Q Who got it from McDougal?

5 A Probably. One of the explanations was it  
6 was just a mistake. He meant to put it in the name  
7 of Great Southern, and put it in the name of  
8 Whitewater. When he realized he had made the  
9 mistake, he transferred it out.

10 The other one was that he put it in the  
11 name of Whitewater because this was around the time  
12 he was trying to get the Clintons to transfer their  
13 interest in Whitewater and he wanted to use the  
14 losses from Whitewater to offset what he was hoping  
15 would be gains in the International Paper property  
16 and that was why he did it.

17 And once the Clintons indicated they would  
18 not transfer their interest unless they were relieved  
19 from the debt, that that wasn't going to work, and he  
20 then transferred it into Great Southern, but at some  
21 point I had two different explanations.

22 Below that, "GS," which I think, well, is



1 Great Southern.

2 Q What is the second explanation?

3 A That was the second. The second  
4 explanation was the tax reason. The first  
5 explanation was it was just a mistake.

6 Q The loss carry forward?

7 A The loss carry forward is the tax reason.

8 The other one, as I say, is he just had multiple  
9 companies and he just put it in the wrong company,  
10 realized at some point he had done that and  
11 transferred it. Below that, "Great Southern, Jack  
12 Files."

13 Q Who is Jack Files?

14 A Jack Files is a Little Rock attorney. I  
15 can't tell what the next word is.

16 Q Is Mr. Lyons recounting information about  
17 Jack Files to you or are you recounting it to Lyons  
18 or is this --

19 A I don't remember. I don't know. I don't  
20 know whether he learned this from Blair or whether I  
21 learned it from Blair.

22 Q Is this, could this potentially be a

1 conversation with Lyons, Blair, Tisdale, and  
2 yourself, a conference call?

3 A I don't think so. I don't remember any  
4 such conference call like that. "Great Southern,  
5 Jack Files," something in operating. "McDougal's  
6 business, foreclosed, Phoenix Mortgage, Dan Lasater,  
7 principal."

8 Q Okay. What does this entry refer to?

9 A I believe that at some point McDougal, I  
10 think filed for bankruptcy, maybe, and that Jack  
11 Files was, I don't know if he was his attorney or  
12 somehow he was appointed to manage the various  
13 properties, corporations and stuff that McDougal had  
14 accumulated, and I believe they were telling me that  
15 this property, that there was a foreclosure on the  
16 property, that a company called Phoenix Mortgage  
17 bought the property.

18 Q These are McDougal properties?

19 A I think we were just talking about the IP  
20 property. I don't think we were talking about the  
21 McDougal's properties in general.

22 Q Okay.

1 A And that Dan Lasater was a principal of  
2 Phoenix Mortgage. That turns out not to be true, I  
3 don't believe. Dan Lasater is the president of a  
4 company called Phoenix something, but I don't believe  
5 that this, I don't believe, I'm not sure that this is  
6 a Dan Lasater company, but I think the fact that the  
7 reference to "Phoenix" in there, either someone said  
8 I wonder if that is Dan Lasater's company or  
9 something. "The Clintons knew nothing about any of  
10 this. Why did McDougal" --

11 Q Is this Lyons recounting information to you  
12 or are you recounting information to Lyons?

13 A Again, I think I would have known first  
14 that the Clintons knew nothing, because I asked the  
15 Clintons, so that may have been something I said.

16 Q Did you normally take notes of what you  
17 were saying in one of these conversations?

18 A I usually don't, but again, I don't know  
19 quite how it came up that I would write it down, but  
20 whether I had told them that in an earlier  
21 conversation and he was now telling it back to me, I  
22 think I'm the one, though, that actually asked the

1 Clintons or asked the President whether he knew  
2 anything about the IP property.

3 "Why did McDougal buy Whitewater." "Some  
4 minor cash flow, he needed it." I have no idea what  
5 that refers to. Then "Heuer, Foster saw that the tax  
6 records be prepared. Not prepared in White House."  
7 Again, I think if you go back to the first notes,  
8 there's a reference to Vince Foster was preparing the  
9 White House tax returns, and I think somebody was  
10 telling me that he was seeing that they were  
11 prepared, but that he wasn't preparing them.

12 Q Could this document, this is document 6116  
13 and 6117, reflect more than one conversation?

14 A It could, but I don't know how. I don't  
15 really know how to respond to that. It all seems to  
16 be related around the issues that came up in the  
17 Gerth deal, but it could.

18 "Susan McDougal in and out of Little  
19 Rock." "Michigan." I don't know, somebody, I may  
20 have, somebody said where is Susan McDougal, and that  
21 was a response.

22 "RTC investigation, Charles James," who

1 was an accountant, "subpoenaed to appear before a  
2 federal grand jury," "records related to McDougal,  
3 Smith, Tucker, Whitewater, Roland," I don't know what  
4 Roland is.

5 Q You don't know who Roland could be or what  
6 it might refer to?

7 A No.

8 Q What does this reference to "RTC  
9 investigation, Charles James, subpoena," refer to?

10 A I assume he was telling me, again I assume  
11 Jim Lyons, that he had learned that Charles James had  
12 been subpoenaed to appear before the federal grand  
13 jury, and to bring records relating to these  
14 entities. There is an entity called, as you all  
15 know, McDougal, Smith, Tucker for Whitewater, and  
16 again I don't know what Roland has reference to.

17 Q Is it your testimony that Mr. Lyons would  
18 have advised you of the fact there was an RTC  
19 investigation seeking information from Mr. James?

20 A If all of this reflects a conversation with  
21 Jim Lyons, then I think, yes. He would have been  
22 telling me that. Where he learned it or how he knew

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1 it, I don't know. If this relates to more than one  
2 conversation, as you suggested, and I don't know,  
3 again, I don't know what part of the conversation  
4 this would have come from.

5 Q Did you or anyone else at the White House  
6 as far as you know attempt to reach out to Mr. James  
7 at any time in 1993 or 1994?

8 A No. I didn't, and I don't know of anyone  
9 who did.

10 Q That would include someone on the outside,  
11 for example Mr. Blair?

12 A I have no idea. I have no knowledge.

13 Q Mr. Blair never told you he reached out to  
14 Mr. James?

15 A No.

16 Q Now, the note refers to a federal grand  
17 jury and then an RTC investigation. As you well know  
18 an RTC investigation would not be something that  
19 would involve a federal grand jury, at least as it  
20 was being conducted by the RTC. So how do you  
21 reconcile the two?

22 A The same way I recognize that the trial

1 involving the McDougals, Jim Guy Tucker and Madison  
2 doesn't have anything to do with Whitewater. The  
3 federal grand jury grew out of the RTC investigation,  
4 and I think I was referring to one entity at this  
5 point and not splitting hairs. I wish, frankly I  
6 wish there would be more splitting of hairs between  
7 what has to do with Whitewater and what has to do  
8 with non-Whitewater-related matters that have been  
9 included in the definition now of Whitewater, but I  
10 believe that was one reference and not two.

11 Q All right. These are notes bearing Bates  
12 number BL 5765 through BL 5767. I think these have  
13 also been produced since you last appeared before the  
14 Committee.

15 A Yes, but again I believe you have seen  
16 these, but I may have, I maybe wrong.

17 MR. KRAVITZ: Do you know which production  
18 it might have been?

19 MR. GIUFFRA: Off the record a second.  
20 (Recess.)

21 BY MR. GIUFFRA:

22 Q What do these notes reflect? This is

1 BL 5765 through 5767?

2 A At some point in this process I took the  
3 Lyons report and I sat there with a pad of paper and  
4 I tried to walk my way through the Lyons report. And  
5 I think if you put this next to the Lyons report this  
6 would track it. Sort of the history of the property  
7 getting into Whitewater, what records were reviewed  
8 by Patton McCarthy and Jim Lyons, and then the  
9 spreadsheets that are attached to the Lyons report I  
10 went through column by column, year to year and tried  
11 to understand how the transactions were paid down and  
12 made questions where I had questions, and that is  
13 what is reflected on the next two pages.

14 Q Let me show you, this is BL 6027 through  
15 BL 6031. It appears to be a fax from Mr. Tisdale to  
16 you dated January 5, 1994.

17 MR. SNYDER: For the record this was  
18 produced by us in a letter dated April 18 indicating  
19 that this was one of the documents that had already  
20 previously been produced to the Committee by others  
21 and we were providing another copy of the same  
22 document that was in Mr. Lindsey's files.



1 Q Just one question on 6028. Is that a  
2 document you proposed or by Mr. Tisdale?

3 A I believe by Mr. Tisdale. Sorry, someone  
4 other than me.

5 Q Was it someone at the White House or  
6 elsewhere?

7 A I believe everything behind the cover sheet  
8 was prepared back in 1992.

9 Q During the campaign?

10 A Correct.

11 Q The following line of questions will be  
12 based on some additional documents that we got from  
13 the White House since you last testified. Do you  
14 recall attending a meeting concerning Whitewater  
15 Development Corporation and related matters at the  
16 White House in January, 1994?

17 A A meeting?

18 Q A number of meetings, presumably.

19 A Yes.

20 Q Can you recall a meeting on January 4,  
21 1994?

22 A I have no idea.

1 Q I believe these are notes of Mark Gearan,  
2 20420 through 20444, although we are not giving you a  
3 complete set here. The Bates numbers are not in  
4 sequential order.

5 MR. SNYDER: Do you want to refer his  
6 attention to a particular portion?

7 BY MR. GIUFFRA:

8 Q Yes, I'm going to. Do you recall attending  
9 a meeting on January 4 in Mr. McLarty's office with,  
10 among other people, Neal Eggleston and Mr. Gearan?

11 A No. Again, January was around the time we  
12 called for the appointment of an independent counsel  
13 or special counsel. We had multiple meetings. Some  
14 in Mr. McLarty's office, some in what is known as the  
15 war room, some other places, so I can't, I don't  
16 remember any particular date and meeting, but I was  
17 in a number of meetings.

18 Q Let me direct your attention to 20428. Do  
19 you know who "P.M." would be?

20 A I assume that was an afternoon meeting, a  
21 meeting in the afternoon.

22 Q I think you are right.

1 MR. KRAVITZ: I think we ought to depose  
2 that person.

3 BY MR. GIUFFRA:

4 Q Says here, "Lindsey notes that Kendall  
5 aware of subpoena." Do you know what that could  
6 refer to?

7 A I can speculate that refers to the issue  
8 that came up about whether or not we turned over  
9 documents to the Justice Department pursuant to a  
10 subpoena or whether we did it less voluntarily --  
11 more voluntarily, I guess. And I think I have noted  
12 that David Kendall said he was aware it was done  
13 pursuant to subpoena.

14 Q The next page, looks like a meeting on  
15 January 6, 5:30 p.m., Whitewater, then there is a  
16 reference, this says, "Beverly Bassett, letter, B.L.  
17 Waldman."

18 A I think that is "info" after "letter."

19 Q "Info." Do you recall a discussion of  
20 Ms. Bassett at a meeting in early January, 1994?

21 A Yes. We talked about that several times.  
22 This is about the time Beverly Bassett -- Jeff Gerth

1 has maybe by now written a second story and  
2 suggesting that she did something improper with  
3 respect to the securities department issue, and you  
4 have, they prepared, she prepared or was prepared at  
5 her direction sort of a chronology and sort of a  
6 cover memo of what she did. You may have 4 or 5  
7 different drafts of it, because I think I have turned  
8 them over.

9 Q What was Mr. Waldman's role with regard to  
10 Ms. Bassett back in January of 1994?

11 A Beverly was considering, I thought, at  
12 least I was told, she I think has indicated she  
13 wasn't considering it, but was considering doing a  
14 press conference. She was tired of sort of having  
15 individual people ask individual questions and have  
16 all these people, and she was giving some  
17 consideration as to whether or not she should sort of  
18 have one conference, bring everybody in there, make  
19 her points.

20 We were talking. Michael Waldman is  
21 actually, while he is a lawyer, is more of a media  
22 person, and I think he was involved or we were

1 talking about his involvement more from the media  
2 aspects of it than from the legal aspects of it. I  
3 don't think he had any involvement with Beverly  
4 Bassett. I think we were just talking about if she  
5 did something like this.

6 Q Okay. Let's turn to the next page. This  
7 is a meeting on appears to be January 7, 1994. Then  
8 it says under item 5, "P.B.," Paul Begala?

9 A I think so.

10 Q He is a political person?

11 A Political/media, yes.

12 Q It says "B.L. Waldman," arrow, "to Arkansas  
13 to meet Beverly Bassett, try to poke holes in their  
14 story."

15 A Yes.

16 Q Do you recall a discussion with Mr. Waldman  
17 yourself or Mr. Begala or some combination of those  
18 names?

19 A Yes.

20 Q Going down to Arkansas to meet with Beverly  
21 Bassett?

22 A Yes.

1 Q What does this refer to?

2 A Again I think we were talking about if she  
3 were to do a press conference, we would go down  
4 there. We would ask, as I assume you do with Senator  
5 D'Amato before he does a press conference, we would  
6 ask tough questions to help prepare her for that.  
7 And these were people who understood the Washington  
8 press corps and would, we thought could be helpful in  
9 preparing her to do that. We would ask the tough  
10 questions.

11 Q Now below that it says, "try to get  
12 independent validation from securities attorney,  
13 search of Arkansas regulation."

14 A Yes.

15 Q Do you recall any discussion along those  
16 lines at this meeting?

17 A I don't remember this meeting. I don't  
18 specifically. At the same time even on the page  
19 before that, it says, "get a lawyer to" -- something,  
20 "check law on issuance of preferred stock." I think  
21 several of the ways we thought to try to reinforce  
22 that Beverly Bassett had not done anything wrong is

1 the same question I asked at the Committee hearing  
2 and that others have asked. And that is no person  
3 that I have ever known who has looked at Arkansas law  
4 believes that there was any decision other than the  
5 decision she made with respect to the issuance of  
6 preferred stock.

7 Q There are people within the securities  
8 department that took a different view?

9 A I think they basically argued about which  
10 statute it may, whether it was the general statute  
11 that says an S&L corporation has all the rights of a  
12 regular corporation or whether it was another  
13 statute, but I think, at least as I have heard that  
14 debate, that was more of an internal debate, under  
15 what authority she could do it, and I think she  
16 decided she had this more broad general S&L  
17 authority.

18 But be that as it may, I think this was a  
19 discussion, we ought to have people out there  
20 validating that in fact this was a reasonable  
21 appropriate reading of the Arkansas statute, so that  
22 it didn't look like she had done something

1 preferential because of Mrs. Clinton. So I think  
2 that is what that is, about "have others," whatever,  
3 "tried to get independent validation from securities  
4 attorneys."

5 Q Was there any discussion at the White House  
6 in either December 1993 or January, 1994 in which  
7 anyone expressed concern that Ms. Schaffer might in  
8 some way change version of events she had briefly  
9 given with regard to her handling of Madison  
10 Guaranty?

11 A No, not that I ever heard.

12 Q The next page, this is 20432, bottom says  
13 H.I., presumably Harold Ickes. Says, "Meeting of  
14 attorneys outside of White House, Beverly Bassett is  
15 so blanking important, if we blank this up - we are  
16 done. Let's not talk it to death, let's just get it  
17 done." And then on the next page it says, "H.I., we  
18 can't send P.B., B.L., M.W., it will come out." Do  
19 you recall any discussion at any meeting that you  
20 attended in January, 1994 about the importance of  
21 Ms. Bassett and the consequences if her story might  
22 in some way be "blanked" up?



1       A    Again, this was all in the context of us  
2 believing that Beverly was considering doing some  
3 sort of a press conference, and I think Harold was  
4 expressing his concern that if she went out there and  
5 did not -- not anything to do with her story, but did  
6 not come across as credible and knowledgeable and  
7 everything, that that would be bad, not good, and the  
8 reference to, that if we went down there that would  
9 become part of the story, that we shouldn't go down  
10 there, someone else would have to help her through,  
11 that is what I really considered sort of media  
12 coaching or media training.

13       Q    So this was all in the context of  
14 Ms. Bassett's indication that she wanted to have a  
15 press conference to provide her side of the story  
16 with regard to what she did when she was the Arkansas  
17 Securities Commissioner in the mid-'80s?

18       A    Yes, or at least to my understanding that  
19 is what she wanted. She says that is what other  
20 people wanted her to do, but she never wanted to do  
21 that, but at the time we were having the discussion,  
22 I understood or believed that was under active

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1 consideration with her and that she was willing or  
2 inclined to do it.

3       Q    Was there any discussion of the fact that,  
4 in any of these meetings in January of 1994, that  
5 Ms. Bassett might be a witness in any kind of a  
6 federal investigation concerning Madison Guaranty?

7       A    I don't remember any discussion of it. No,  
8 I don't remember any discussion of it.

9       Q    You said you guess --

10       A    Well, there was a federal investigation  
11 going on. If I had, I didn't think about it. If I  
12 had thought about it, I would have assumed that to  
13 the extent they were looking at this part of it --

14       Q    At these meetings you were just discussing  
15 the production of documents and responses to  
16 subpoenas?

17       A    Right, but mostly to do with Whitewater.  
18 This didn't have to do with Whitewater. There was no  
19 discussion of that. None of these notes were in the  
20 context of a federal investigation. They were in the  
21 context of a media event, of a press conference.

22       Q    So it's your testimony that any discussion

1 of Ms. Schaffer in December or January, 1994 would  
2 have been solely in the context of her potentially  
3 being, making a public statement at a press event and  
4 not in the context of her potentially being a witness  
5 in a federal investigation?

6 A Any discussion I was involved in, yes.

7 Q And that would include discussions you  
8 might have had with Ms. Bassett or her husband?

9 A Yes. As I said, I don't think I ever had a  
10 discussion with Ms. Bassett. I think I spoke to her  
11 husband. He told me that she was upset and if I was  
12 smart I wouldn't bring it up.

13 Q Now, below the discussion of you going down  
14 there or Ms. Williams or Mr. Begala, it says, "Item  
15 by item, make sure her story is okay. Tisdale? In  
16 Lindsey firm. Skip? White House pass. P.B. friend,  
17 looks likes 'M' lawyer."

18 A Someone said that was "NY lawyer."

19 Q "New York lawyer."

20 A But I have no idea why.

21 Q Do you know what this discussion in these  
22 notes could refer to?

1 A The same discussion, is that if someone  
2 still needed to go down and go through these  
3 questions and get her comfortable with the kind of  
4 questions she would have, if it couldn't be Paul  
5 Begala, Bruce Lindsey and Michael Waldman who could  
6 it be, and someone suggested John, and the criticism  
7 there would be that John was in my firm. Skip. Skip  
8 at that point still had a White House pass. Again so  
9 we were talking about some of these people might have  
10 the same sort of difficulties we had. I don't know  
11 who the reference to Paul Begala friend is.

12 Q And again the concern was strictly that if  
13 one of these people went and coached her on media,  
14 responding to media questions, that that might be in  
15 some way cast into a negative on the White House?

16 A Right. Well, or that we were -- yes.

17 Q Did you attend any meetings in January,  
18 1994 in which a man named Alan Carver was discussed?

19 A Not that I'm aware of.

20 Q This is an Alan Carver who works at the  
21 Department of Justice?

22 A Oh, is that the reference about "blue"? I

1 don't remember it being, I don't remember that  
2 conversation. I may have been there, but the name  
3 doesn't ring a bell. That is another one of Harold's  
4 references.

5 Q Have you ever discussed these notes with  
6 Mr. Ickes?

7 A No.

8 Q Or Mr. Ickes, have you ever discussed with  
9 Mr. Ickes his testimony before this Committee?

10 A Other than an open --

11 Q Other than the fact that he testified?

12 A I think one time when he was fairly  
13 aggressive I complimented him.

14 Q No discussions of the substance of this  
15 testimony?

16 A No, no, sir.

17 Q Here is another document, Bates number BL  
18 6230 through 6232. These are documents I think that  
19 you had originally asserted a privilege on and we  
20 have gotten.

21 A Yes, after the non-waiver agreements were  
22 worked out.

1 MR. SNYDER: Those were produced with our  
2 letter of May 24, 1996.

3 BY MR. GIUFFRA.

4 Q Now the first document is a fax from Mr. --

5 A Can't tell on the cover sheet.

6 Q Looks like Douglas Buford?

7 A B-u-f-o-r-d.

8 Q To you. It says "confidential." Then  
9 there is a memo attached to it.

10 A Just curious. Where on the front sheet you  
11 see -- oh, from C. Douglas Buford. Okay. Yes.

12 Q Do you recall receiving this fax with the  
13 attachment from Mr. Buford?

14 A In general, yes.

15 Q What were the circumstances under which you  
16 received this fax from Mr. Buford with an attachment,  
17 I should say the attachment is a memo from Mr. Buford  
18 to Mr. Lindsey dated January 6, 1994 and the "re" is  
19 "Union Loan to Bill Clinton."

20 A I think I was trying to find out  
21 information about the \$20,000 loan that the President  
22 and Jim McDougal had taken out to make the down

1 payment portion, what I call the down payment portion  
2 of the Whitewater property. What had happened to it,  
3 how it had been paid off, so forth.

4 Q And why were you attempting to find out  
5 about what had happened to this union loan to Bill  
6 Clinton?

7 A Again you would probably have to go to the  
8 press around January 9, 1994 and see.

9 Q January 6?

10 A The cover sheet is dated 9, I'm sorry, but  
11 January 6 and see what issue, somehow this loan came  
12 up. I don't know, you know there was a whole series  
13 of articles, you have got a whole lot of documents I  
14 have given you on the tax treatment of all of this.

15 I don't know whether, I don't know if this  
16 was part of that, but at some point an issue came up,  
17 either raised by the press or somebody else about the  
18 union loan and I was trying to find out as much as I  
19 could about the union loan.

20 Q Now, was Mr. Buford, was he acting as  
21 counsel to the Clintons at this point?

22 A My law firm represents the Clintons, have

1 from the campaign on, also represents the campaign.  
2 Lawyers in my firm represent the Clintons on various  
3 matters currently.

4 Q So it's your testimony that on January 6,  
5 1994 Mr. Buford was providing some sort of legal  
6 advice to President and Mrs. Clinton in their  
7 personal capacity?

8 A I'm sorry?

9 Q As of January 6, 1994 Mr. Buford was  
10 providing legal advice to the President and  
11 Mrs. Clinton in their personal capacity?

12 A Again you would have to ask Mr. Buford how  
13 he viewed himself.

14 Q What was your understanding of what  
15 Mr. Buford was doing for the Clintons on January 6,  
16 1994?

17 A Throughout this whole period, I had  
18 discussions with lawyers related to various matters.  
19 I believe that Wright, Lindsey & Jennings has an  
20 attorney-client privilege with the President of the  
21 United States. I think they had it back then. I  
22 think they continue to have it.



1 By the way, I note down here the record  
2 would indicate that Denton's memory is incorrect  
3 about the repayment of this loan coming from a Tucker  
4 and McDougal loan. That is in paragraph 4. Again  
5 that makes me think that there must have been a Don  
6 Denton quote out there someplace about this that  
7 caused me, again I'm speculating, but would cause me  
8 to find it, say how was the loan paid off and so  
9 forth.

10 Q Do you know whether anyone from either  
11 White House or from the Wright Lindsey firm or any  
12 other agent of the President and Mrs. Clinton had  
13 attempted to contact Mr. Denton some time prior to  
14 January 6, 1994?

15 A I doubt it. I have no idea. I didn't.

16 Q You didn't direct anyone to contact  
17 Mr. Denton?

18 A No.

19 Q As far as you know no one from the Wright  
20 Lindsey firm contacted Mr. Denton?

21 A As far as I know, no.

22 Q So it's your best testimony that this would

1 be probably some sort of a press statement that  
2 Mr. Denton had made?

3 A Again I'm guessing, only because of that  
4 reference in paragraph 4, but I do remember  
5 Mr. Denton making allegations around, I'm not sure  
6 around this time, but has made allegations about the  
7 \$20,000 loan.

8 Q And you were not, am I right, in January of  
9 1994 acting as counsel to the Clintons in their  
10 personal capacity with regard to Whitewater?

11 A In their personal capacity, no. That does  
12 not mean I don't believe I was counsel to the  
13 Clintons with respect to Whitewater.

14 Q Was your function simply to respond to  
15 press inquiries?

16 A No.

17 Q Did you have an additional function?

18 A I also gave legal advice. I also  
19 participated in legal lawyers meetings. I considered  
20 myself then and consider myself now an attorney, not  
21 a press spokesman.

22 Q What was the purpose of those meetings of

1 lawyers at the White House, was that to respond to  
2 potential investigations that might be brought or in  
3 progress regarding Whitewater/Madison Guaranty?

4 A No. We have a whole set of lawyers over  
5 there that deal with your Committee every day that  
6 are lawyers --

7 Q Our Committee wasn't in existence in  
8 January of 1994.

9 A The theory is exactly the same. There are  
10 all sorts of inquiries that involve the President of  
11 the United States that require legal representation,  
12 not only by private counsel who make personal  
13 appearances in private lawsuits and private  
14 investigation, but by lawyers in the White House  
15 functioning as lawyers doing what I consider to be  
16 legal work.

17 Q But it would be your testimony that in this  
18 period September, October, November, December,  
19 January, from September to December '93 and January,  
20 1994, the work of the White House lawyers was all  
21 within the rubric of responding to press inquiries?

22 A That is not my testimony.

1 MR. SNYDER: It's actually the opposite.

2 BY MR. GIUFFRA.

3 Q His testimony was that White House lawyers  
4 respond to inquiries. Well, the only inquiries that  
5 I'm aware of that Mr. Lindsey has testified to that  
6 he was responding to were press inquiries.

7 A No, we were involved in the production of  
8 documents to the Justice Department. We were  
9 involved in almost every aspect of this. We were not  
10 the Clintons private attorneys. Once this matter  
11 became a "criminal investigation," the Clintons hired  
12 David Kendall to represent them in that fashion. But  
13 that does not mean, I mean to try to create a  
14 distinction between lawyers in the White House, every  
15 day we deal with matters that are both private and  
16 public. Whether the President testifies before a  
17 hearing is both a private and public matter. Whether  
18 the President can be sued is both a private -- in his  
19 private capacity is both a private and a public  
20 matter. There is not a neat division that says this  
21 involves the President as President and this involves  
22 the President as a private citizen, and there are

1 lawyers who every single day in the White House do  
2 things that I believe should be protected by  
3 attorney-client privilege. I'm sorry they haven't  
4 been protected as much as I believe they should be.

5 Q Do you have any understanding as to whether  
6 work product created by White House lawyers was ever  
7 provided to Mr. Kendall?

8 A I don't know.

9 (Witness conferred with counsel.)

10 THE WITNESS: I have some vague memory. I  
11 believe, I can't quite remember whether it went from  
12 Kendall to us or us to Kendall, but that Neal  
13 Eggleston may have done a chronology at some point  
14 that he provided to David or that there is some  
15 reference in some notes to his doing a chronology,  
16 but beyond that, I don't know of any.

17 Q That is the only piece of work product that  
18 you are aware of that was ever provided to  
19 Mr. Kendall?

20 MR. SNYDER: Well, let me interrupt,  
21 because we have already had testimony today and in  
22 prior hearings ad nauseum about meetings between

1 Kendall and White House lawyers where there was  
2 discussion of issues, and I think arguably the  
3 discussion and the reports by White House lawyers of  
4 what they knew on certain subjects one could argue is  
5 work product. I think you are really asking a series  
6 of legal questions as to how to characterize the work  
7 of White House lawyers, whether it's work product or  
8 it's not work product, whether they are acting in one  
9 capacity or another, and I think fundamentally those  
10 are issues of law that actually have been briefed to  
11 some extent before your Committee and I'm not sure  
12 it's productive to have those legal arguments today.

13 THE WITNESS: The answer to that is if you  
14 want to go through almost every document I sent a  
15 release that we drafted to Kendall when we turned  
16 over the documents to the Justice Department. That  
17 is work product. That was shared with Mr. Kendall.  
18 So again I'm not going to say the only one I remember  
19 is the Neal Eggleston memo. I don't even know if I  
20 have ever seen the Neal Eggleston chronology. I just  
21 know there has been testimony about a chronology I  
22 think Neal was preparing that he gave to David.

1 Q Okay. But other than the November 5, 1993  
2 meeting, are you aware of other meetings with  
3 Mr. Kendall at which White House counsel, the lawyers  
4 working at the White House provided to Mr. Kendall  
5 information that they obtained in the course of their  
6 inquiries into the Whitewater/Madison matter?

7 A I assume Jane Sherburne and her staff and  
8 Kendall share information all the time. I had a  
9 meeting with Kendall about the time we turned over  
10 the documents, that we talked about the document  
11 production being completed.

12 Q This is back in 1994?

13 A 1994, yes.

14 Q Did you attend any other meetings?

15 A I thought Kendall may have been at some of  
16 the, either directly or by phone, at some of the sort  
17 of Whitewater strategy sessions we had.

18 Q Okay. I believe you testified at your last  
19 deposition that you had somewhere between five and 10  
20 meetings with Mr. Kendall in 1993, 1994.

21 A Probably.

22 Q Do you recall whether, if at any of those

1 meetings information gathered by White House lawyers  
2 was provided to Mr. Kendall?

3 A Gathered, that is what I don't know. If  
4 someone calls me and says something to me and I then  
5 talk to David and I say, I'm not talking about a  
6 federal employee, I'm talking about people outside  
7 who call and give me information and I give that  
8 information to David, if that is what you mean by  
9 sharing information gathered by White House attorneys  
10 with Mr. Kendall, then yes. You will see in my notes  
11 of meetings, you know, I would get press inquiries, I  
12 would tell him about them. He would get press  
13 inquiries, he would tell me about them. We would  
14 exchange information. If I got something like this,  
15 I don't know if I did or didn't, but I might have  
16 provided that to David.

17 MR. SNYDER: That is a reference to BL 6230  
18 through 6232.

19 THE WITNESS: I don't believe at any point  
20 that I provided him information that came from a  
21 government source. I don't think I ever had  
22 information, other than we could argue the October



1 meeting, I guess, again, but I thought most of that  
2 information came from a press source. I don't  
3 believe I ever had information from government  
4 sources.

5 Q Has the Committee received all of your  
6 notes of conversations that you had with Mr. Kendall  
7 or any notes being withheld on grounds of  
8 attorney-client privilege or work product?

9 A I don't know the answer to that.

10 MR. GIUFFRA: Off the record.

11 (Discussion off the record.)

12 MR. SNYDER: We have now produced to you  
13 everything in Mr. Lindsey's files that has been  
14 called for by your requests, some of which was  
15 previously withheld based on privilege, and as we  
16 understand it you have had certain discussions or  
17 negotiations with Mr. Kendall and others and those  
18 privilege issues have been resolved, and we have,  
19 based on that, produced everything that was called  
20 for.

21 BY MR. GIUFFRA:

22 Q Other than what you have testified to

1 previously do you recall anything further about any  
2 discussions you had with Mr. Kendall in 1993 and  
3 1994?

4 A I'm sure you could refresh my memory, but  
5 just as a universal, no.

6 Q You testified to a November 5, 1993  
7 meeting. Do you recall any other meetings you had  
8 with Mr. Kendall after that meeting, after that  
9 meeting in 1993 or in 1994?

10 MR. KRAVITZ: Bob, I think Mr. Lindsey was  
11 asked extensive questions about this exact subject in  
12 the previous deposition and he certainly was  
13 available for questioning on this subject at a  
14 previous public hearing. I don't remember whether he  
15 was asked about it, but I think we should try to  
16 avoid repetition. In fact, you yourself just a  
17 moment ago referred to Mr. Lindsey's testimony about  
18 having had five or 10 additional conversations with  
19 Mr. Kendall.

20 MR. SNYDER: That's correct, that was at a  
21 deposition held in this room, and you did go through  
22 his recollection and he stated he was sure there had

1 been several discussions and a lot of discussions of  
2 press calls, but he couldn't pin it down more  
3 precisely than he did in that deposition.

4 BY MR. GIUFFRA:

5 Q Just to state this on the record, my  
6 recollection, I can take a look right now, it was  
7 that we identified the number of meetings, but there  
8 was no discussion of the substance of those meetings,  
9 and that the attorney-client privilege was asserted  
10 by counsel for Mr. Lindsey. If we go off the record  
11 I will find the exact page.

12 (Discussion off the record.)

13 BY MR. GIUFFRA:

14 Q Other than meetings, Mr. Lindsey, that you  
15 had with the President, the First Lady, Mr. Kendall  
16 and Mr. Nussbaum, have you testified fully about any  
17 other meetings you had with Mr. Kendall in the period  
18 December -- January, 1994?

19 MR. KRAVITZ: Bob, I object to that  
20 question. I don't understand what you mean "testify  
21 fully."

22 MR. GIUFFRA: I'm just trying to get

1 through this quickly.

2 MR. KRAVITZ: That doesn't mean you should  
3 ask a poorly phrased question.

4 BY MR. GIUFFRA:

5 Q At your deposition on January 10, 1996 you  
6 indicated that you had a number of meetings with  
7 Mr. Kendall between November and March, November 1993  
8 and March, 1994. Do you recall that?

9 A No, but I did.

10 Q Somewhere between five and 10 meetings?

11 A You asked me to guess and I think I guessed  
12 between five and 10 meetings, yes.

13 Q Okay. We already know about the November 5  
14 meeting you had with Mr. Kendall. We have notes  
15 about that. We already had testimony about that.  
16 What do you recall about any of the other meetings  
17 you had with Mr. Kendall?

18 MR. KRAVITZ: I object to this question.  
19 You know, Bob, we had a discussion about this at  
20 Mr. Lindsey's deposition on January 10, 1996, the one  
21 you are referring to. There were assertions of  
22 attorney-client privilege made. As far as I know and

1 I believe as far as you know nothing has changed to  
2 render those assertions of attorney-client privilege  
3 invalid.

4 You made reference off the record to  
5 documents that had been produced since the time of  
6 this deposition. I'm not aware of any documents that  
7 have been produced that relate to any meetings  
8 between Mr. Lindsey and Mr. Kendall. If there are  
9 any, I would ask you to point them out, and in the  
10 absence of that, I don't see why we are going over  
11 something, and if your purpose is simply to have  
12 Mr. Lindsey through his lawyer assert a privilege  
13 again, that would be entirely inappropriate. I think  
14 we should try to move this along toward some relevant  
15 subject.

16 MR. GIUFFRA: Mr. Lindsey has testified that  
17 his work that he did in this period related to  
18 responding to press inquiries, and I fail to see how  
19 the attorney-client privilege would or work product  
20 privilege would protect communications he had with  
21 Mr. Kendall about responding to press inquiries,  
22 particularly if those meetings were attended by

1 nonlawyers.

2 MR. KRAVITZ: Bob, this is a completely  
3 inappropriate forum to be making these arguments. As  
4 you know, to whatever extent any privileges have been  
5 asserted, those are at the direction, that has been  
6 at the direction of Mr. Kendall. To put Mr. Lindsey  
7 in the position of having to respond to your comment  
8 or his lawyer not only is inappropriate but not  
9 likely to move us forward and reach any testimony.  
10 So if you really want to raise this, you should have  
11 raised it with Mr. Kendall before the deposition.

12 MR. GIUFFRA: Mr. Kendall has produced the  
13 documents reflecting what he previously asserted  
14 privilege on through the agreements we reached.

15 MR. KRAVITZ: Which documents are those?

16 MR. GIUFFRA: The documents we have gotten  
17 since Mr. Lindsey's last deposition. There are a  
18 number. Why don't we just --

19 MR. SNYDER: We are prepared to answer  
20 questions on any of those documents.

21 BY MR. GIUFFRA:

22 Q Why don't we do this. Did you attend any

1 meetings --

2 MR. KRAVITZ: Let me make one more  
3 comment. It's been clear, actually you have asked  
4 Mr. Lindsey questions about documents that have been  
5 produced since the time of Mr. Lindsey's last  
6 deposition, documents which had previously been  
7 withheld on the basis of privilege but subsequently  
8 produced to the Committee. I'm not aware that any of  
9 those documents that have been produced under those  
10 circumstances relate to any meetings that Mr. Lindsey  
11 had with Mr. Kendall. So I don't see how the  
12 production of those documents can be deemed to have  
13 changed in any way Kendall's position as to his  
14 assertion of attorney-client privilege relating to  
15 meetings that he may or may not have had with  
16 Mr. Lindsey. Do you see how that could have affected  
17 that assertion of privilege, Bob?

18 MR. GIUFFRA: We can call Mr. Kendall when  
19 we have a break to get into it. Let's see if we can  
20 figure out through the testimony of Mr. Lindsey  
21 exactly what we are talking about. I think we are  
22 talking in a vacuum.

1 BY MR. GIUFFRA:

2 Q Mr. Lindsey, you attended a number of  
3 Whitewater group meetings in the period November  
4 through March, November '94, March '95; right?

5 A Correct.

6 Q And not only --

7 MR. KRAVITZ: You are off a year.

8 Q '93 and '94, and not all persons who  
9 attended those meetings were lawyers; right?

10 A Correct.

11 Q And sometimes Mr. Kendall would attend  
12 those meetings; right?

13 A I think.

14 Q Okay.

15 A Either by phone or in person.

16 Q At any of those meetings that were attended  
17 by non-lawyers and Mr. Kendall, do you recall when  
18 those meetings might have occurred?

19 A Other than broadly in the period you have  
20 outlined, no.

21 Q Do you recall anything about what was  
22 discussed at those meetings?



1 A We discussed whatever the current issue was  
2 related to Whitewater, in terms of what was in the  
3 press, what members of Congress were saying, what, so  
4 forth.

5 MR. SNYDER: Bob, do you believe  
6 Mr. Lindsey has asserted that someone else has  
7 asserted an attorney-client privilege with regard to  
8 those meetings?

9 MR. GIUFFRA: I don't believe so.

10 MR. SNYDER: I don't believe so either. I  
11 think he testified already about that.

12 MR. GIUFFRA: What I'm trying to do is  
13 figure out, it may well be the only meeting that  
14 there is any issue about is this meeting between  
15 Mr. Nussbaum, Mr. Kendall the President and the First  
16 Lady and Mr. Lindsey. If that is correct, at least  
17 we know what the meeting is, and if we were going to  
18 try to get a non-waiver agreement with Mr. Kendall we  
19 would know what meeting we were dealing with and  
20 conceivably this week we could arrange to do that.  
21 That is what I have been trying to ascertain.

22 BY MR. GIUFFRA:

---

1 Q As far as you know, Mr. Lindsey, is that  
2 the only meeting that we have a privilege issue  
3 regarding?

4 A I don't know. It's the only meeting that I  
5 think that I can recall. I think the clients were  
6 present.

7 Q And that meeting would have been held when?

8 A I don't remember.

9 Q In '94?

10 A I think probably '93, but I don't  
11 remember.

12 Q This would have been a meeting in 1993,  
13 sometime after Mr. Kendall was retained in the White  
14 House residence?

15 A Correct.

16 Q And approximately how long was the meeting?

17 MR. KRAVITZ: Excuse me, are we talking  
18 about the meeting with the President and  
19 Mrs. Clinton?

20 THE WITNESS: Bernie Nussbaum, David  
21 Kendall and myself.

22 MR. KRAVITZ: I'm informed by

1 Mr. Ben-Veniste that Senator D'Amato has stated on  
2 the record previously at a public hearing that the  
3 Committee does not intend to inquire into the  
4 substance of this meeting. In light of that, I fail  
5 to see what possible relevance the circumstances  
6 surrounding that meeting could have to the  
7 Committee's inquiry.

8 MR. GIUFFRA: Again I'm not familiar with  
9 every moment of the hearings, but I think what  
10 Chairman D'Amato --

11 MR. KRAVITZ: Well, he said what I just  
12 said.

13 MR. GIUFFRA: I'm not entirely sure that is  
14 correct. Chairman D'Amato said the Committee doesn't  
15 have an interest in examining the substance of  
16 communications between the President, First Lady and  
17 Mr. Kendall, but when you have White House lawyers  
18 paid for by the taxpayers attending those meetings,  
19 there certainly are privilege issues that arise and  
20 they are the same privilege issues that arose in  
21 connection with the Kennedy notes, and the  
22 Committee's position with regard to the Kennedy notes

---

1 was that we were, the Committee was entitled to  
2 them.

3 So potentially you could reach the same  
4 kind of agreement with regard to the substance of  
5 this meeting, which would be some sort of a  
6 non-waiver agreement, and I don't think there has  
7 been ever discussion at any public hearing about the  
8 possibility of obtaining a non-waiver agreement from  
9 the President and Mrs. Clinton with regard to what  
10 was discussed at this meeting between White House  
11 lawyers, the President, private lawyers and the  
12 President and Mrs. Clinton. So all I'm trying to  
13 find out is when the meeting occurred, how long the  
14 meeting went, all non-privileged matters.

15 MR. BEN-VENISTE: Let me make a statement,  
16 that my specific recollection was the Chairman saying  
17 that he would not inquire into any meetings in which  
18 Mr. Kendall was present with his clients, Mr. and  
19 Mrs. Clinton, and in the absence of some specific  
20 direction between and among the Chairman and ranking  
21 member on this issue, I would say it is inappropriate  
22 at this late date in the proceedings to, for a

1 staffer to countermand the Chairman's instructions.

2 MR. GIUFFRA: Well, I disagree with what  
3 Mr. Ben-Veniste has said.

4 MR. BEN-VENISTE: Then let's take it to the  
5 Chairman and the ranking member.

6 MR. GIUFFRA: I'm not asking about the  
7 substance. I'm trying to ascertain when the meeting  
8 occurred, how long the meeting was, who was present.  
9 That's all.

10 MR. SNYDER: I think we have established  
11 that who was present as far as the witness recalls,  
12 and that it was probably late 1993.

13 BY MR. GIUFFRA:

14 Q How long did the meeting last?

15 MR. SNYDER: I think I'm going to instruct  
16 the witness not to answer the question until the  
17 Committee clarifies its position on whether further  
18 inquiry is appropriate. This is not an issue that  
19 Mr. Lindsey is involved in. There have been prior  
20 discussions within the Committee and also between the  
21 Committee and Mr. Kendall. We will follow whatever  
22 directions were given. It's not Mr. Lindsey's

1 privilege to either assert or to waive. And once the  
2 Committee decides on its position and discusses it  
3 with Mr. Kendall, we will testify accordingly.

4 BY MR. GIUFFRA:

5 Q All right. Excepting meetings with the  
6 President and Mrs. Clinton and Mr. Kendall, did you  
7 ever attend any other meetings between yourself and  
8 Mr. Kendall and only White House lawyers?

9 A And only White House lawyers?

10 Q Yes.

11 MR. SNYDER: Are you excluding the meetings  
12 that we previously talked about regarding the  
13 November '93, March '94 period of so-called  
14 Whitewater response team?

15 A They had non-White House lawyers there. I  
16 guess the answer is I don't recall. There may have  
17 been one that there was nobody other than White House  
18 lawyers in, in most of the meeting, though I think at  
19 some point there may have been non-White House  
20 lawyers involved.

21 Q When would that have been held?

22 A January of '94.

1 MR. KRAVITZ: Those were the meetings you  
2 testified about with regard to these notes.

3 THE WITNESS: No, this is the meeting that  
4 at the time we did the production of the documents,  
5 we had a discussion about had we completed it and so  
6 forth and that we ultimately wrote a press release.  
7 I'm not sure that there were lawyers in that meeting  
8 all the time, but there were certainly, I think at  
9 the end when we finally prepared the press release,  
10 we brought in the press people from the White House  
11 and gave it to them and told them what we had done.

12 BY MR. GIUFFRA:

13 Q What was the press release concerning?

14 A Turning over of, in two different batches,  
15 in January, we turned over all of the Whitewater  
16 related documents to the Justice Department.

17 Q Okay. So the press release concerned the  
18 turning over of the documents?

19 A Correct. There was discussion that went on  
20 before the actual press release was written.

21 (Witness conferred with counsel.)

22 BY MR. GIUFFRA:

1 Q This would be the January 5, 1994 press  
2 release?

3 A Again, if that is the one, I looked at one  
4 yesterday in looking at the notes that we turned over  
5 that has a note on the bottom that I wrote to David  
6 which says something to the effect that if this is  
7 okay with you, we are, this is what we will probably  
8 say.

9 Q So in the end the only meeting that we  
10 really have not discussed the substance of that you  
11 attended with Mr. Kendall or that we have not  
12 identified would have been this meeting with the  
13 President and Mrs. Clinton, Bernie Nussbaum, yourself  
14 and Mr. Kendall?

15 A Related to Whitewater?

16 Q Yes.

17 A You might be, it's the only one I can  
18 recall. If you told me of another one I might  
19 remember it, but it's the only one I can recall.

20 Q Let me show you a document bearing Bates  
21 number S 20888 to 20889.

22 A Yes.



1 Q Now, the "M.W.," is that Michael Waldman or  
2 Maggie Williams?

3 A I think have to look at it again. I think  
4 when I read it I thought it was Michael Waldman.

5 Q And the reference to counsel, is that  
6 private counsel or White House counsel, what was your  
7 understanding, when you received these assignment  
8 sheets from Mr. Ickes?

9 A I assumed it was the White House counsel's  
10 office.

11 Q Now, do you recall working on a chronology?

12 A No. I mean I reviewed various chronologies  
13 and made comments on it, but I didn't prepare any  
14 chronologies. I did review and edit chronologies.

15 Q Did you review or edit any chronology  
16 prepared by the Williams & Connolly law firm?

17 A I don't think I reviewed or edited it. I  
18 think I reviewed, I have some sense that shortly  
19 after we did our meeting in November that he prepared  
20 a chronology that I saw at some point.

21 Q Then it says here, "Synopsis of Whitewater,  
22 Madison Guaranty matter," and your name is also

1 listed. Did you do any work preparing the synopsis  
2 of the Whitewater, Madison Guaranty matter?

3 A Again, I actually have seen a document I  
4 think that says "Synopsis of Madison, Whitewater  
5 related," I think you all have, which means I would  
6 have reviewed it after it was done.

7 Q Turn to the second page. Item 13 says,  
8 "Research issue of whether then Governor Clinton  
9 used political or other to see that Madison Guaranty  
10 be given special consideration." You are one of the  
11 people that task is assigned to. Do you recall doing  
12 any work in connection with that task?

13 A Well, that is basically the Beverly Bassett  
14 matter, I assume.

15 Q And so you and people from the White House  
16 counsel's office, Paul Begala and Michael Waldman  
17 were assigned to ascertain whether the Governor had  
18 used political or other pressure to see to it that  
19 Madison Guaranty be given special consideration?

20 A I don't know. "Research issue," I don't  
21 know whether that is just, I don't quite know what  
22 that is.

1 Q Do you have any understanding of what he  
2 meant by "research issue"?

3 A No. I mean, you know, again I was  
4 involved, Begala, Waldman were involved as the notes  
5 reflect, in discussions about Beverly Bassett and a  
6 press strategy. I don't know what "research issue"  
7 means.

8 (Witness conferred with counsel.)

9 THE WITNESS: The notes also reflect that  
10 we were talking about having people do independent  
11 securities lawyers make reference, review the issues,  
12 so all of that could have been part of that.

13 Q Do you recall the discussion at any of  
14 these meetings in January of 1994 of the preparation  
15 of a memo regarding the failure to take a deduction  
16 on a tax return for Whitewater losses?

17 A I'm sorry, repeat the question.

18 Q Do you recall any discussion at any of  
19 these Whitewater meetings in January, 1994 of the  
20 preparation of a memo regarding the failure to take a  
21 deduction on the tax return for Whitewater losses?  
22 It's item 15.

1 A I don't remember it being in the meeting.  
2 We had discussions. You know we were being damned if  
3 we do and damned if we don't. Because the President  
4 and First Lady decided on their taxes in 1992 to  
5 declare the entire thousand dollars that they got  
6 from Jim McDougal and not offset the losses they had,  
7 you know, that was used as a tool to suggest that we  
8 had been, we had misspoken during the Lyons report  
9 that they had losses. I don't remember. That was an  
10 issue throughout this entire period. I don't  
11 remember specifically in these meetings discussing  
12 that, but there were certainly a lot of discussions  
13 about that and a reference to the fact that it was  
14 the first time anybody ever been criticized for  
15 paying more taxes than they probably owed.

16 Q Did you or anyone at your -- strike that.  
17 Do you have any understanding as to whether  
18 anyone at the White House ever attempted to contact  
19 Chris Wade, either directly or indirectly, in the  
20 period November '93 through March, '94?

21 A I don't know that, no.

22 Q Did you ever attempt to contact Chris Wade

1 yourself?

2 A No.

3 Q Ever ask Mr. Blair to contact Chris Wade?

4 A Don't think so.

5 Q During the 1992 presidential campaign did  
6 you ever discuss -- strike that.

7 Did you have any understanding as to  
8 whether anyone from the Clinton campaign or any agent  
9 of the campaign contacted Chris Wade?

10 A I assume they did, yes.

11 Q Do you know whether Mr. Blair spoke to  
12 Chris Wade?

13 A No, Mr. Wade gave an affidavit or statement  
14 that was released sometime during the '92 campaign,  
15 and I assume, I think the campaign released the  
16 statement, so I assume someone spoke to him to get  
17 the statement.

18 Q Did you speak to Mr. Wade?

19 A No, I don't think I have ever spoken to  
20 Mr. Wade.

21 Q Do you know if Mr. Blair spoke to Mr. Wade?

22 A I don't know. No.

1 Q I will show you a document --

2 A I say I never spoke to Mr. Wade. I may  
3 have been at a political rally sometime where he was  
4 there, but I don't have any memory of a Mr. Wade.

5 Q In January '94 did you speak with  
6 Ms. Wright about Whitewater?

7 A I have no idea.

8 Q Do you know whether, did you have any  
9 knowledge as to whether Ms. Wright was going to be  
10 going to a document depository to look for Whitewater  
11 documents in January of 1994?

12 A I knew she was going to the depository.  
13 I'm trying to remember if I knew she was going to  
14 look for Whitewater documents. I don't remember why  
15 she was going down there.

16 Q Did she ask you to contact anyone so she  
17 could look at those documents?

18 A Yes.

19 Q In the depository?

20 A Yes.

21 Q What do you recall about any conversations  
22 you had with Ms. Wright about her going to the

1 document depository?

2 A I remember she said she, again I don't  
3 remember why she wanted it, whether she was just  
4 getting press inquiries and wanted to refresh her  
5 memory or what her purpose was, but she asked me to  
6 call, I believe probably Susie Whittaker and arrange  
7 for her to be -- she was going to be in Little Rock I  
8 think for other purposes, and arrange for her to be  
9 able to go out to the depository and have access to  
10 the documents.

11 Q It was your understanding that Ms. Wright  
12 was going on her own, the decision Ms. Wright made,  
13 and not a decision Ms. Wright made at the direction  
14 of anybody to go and review those documents?

15 A I believe that was true. She certainly  
16 wasn't going under my direction, and I don't have any  
17 sense she was going under anybody else's direction.

18 Q When she asked you to make arrangements so  
19 she could get into the depository, she said simply,  
20 "I want to go look at the documents," period?

21 A I don't remember what she said. She could  
22 well have said something like, "I keep getting asked

1 questions about this stuff. I need to go back and  
2 look at this stuff. Would you make arrangements for  
3 me to go down and look at them," or, "Will you make  
4 arrangements for me when I'm down there to look at  
5 them."

6 Q But as far as you know she was not acting  
7 under the direction of anyone associated with the  
8 White House?

9 A Not that I'm aware of.

10 Q Do you know a Kevin Garnett?

11 A Who?

12 Q Kevin Garnett.

13 A I don't believe so.

14 Q He is a lawyer at the Wright Lindsey firm.

15 A Karen.

16 Q Karen, excuse me.

17 A Yes, she is a lawyer at the Wright, Lindsey  
18 Jennings firm. She may be a paralegal, not a lawyer,  
19 but maybe she's a lawyer, I'm not sure.

20 Q Do you have any understanding as to whether  
21 Ms. Garnett, spoke with Ms. Schaffer in January,  
22 1994?



1       A    I don't have any specific, I have read her  
2    memos that make reference to her having spoken to  
3    Ms. Schaffer. As I said, part of what they were  
4    doing in November was --

5       Q    This is January.

6       A    January, excuse me, was to, I don't know if  
7    this was after we decided -- not we decided, she  
8    decided not to do a press statement about the same  
9    time, but to do what I used to term, what I termed  
10   before the Committee sort of a white paper in which  
11   they would have sort of a cover memo plus a  
12   chronology behind it of all of the securities  
13   department's involvement with Madison and that that  
14   would be distributed as a way to respond to these  
15   press allegations about preferential treatment.

16      Q    Did you ever discuss with Ms. Bassett the  
17   fact that she had prepared a memorandum for  
18   Mr. Tucker in 1994 regarding HUD compliance in  
19   connection with Mr. McDougal's Campa Bella project?

20      A    I don't believe I have ever discussed that  
21   with her, no. I know she has stated that that is the  
22   only Madison work she ever did.

1       Q    And I misspoke. It was '84.

2       A    Yes.

3       Q    And you never discussed that memo with her  
4   or why she prepared it or whether she should have  
5   disclosed it or not?

6       A    No.

7       Q    Let me show you some notes. These bear  
8   Bates number S 20790 to 94. It's is the last  
9   document.

10      MR. SNYDER: Whose notes are these?

11      MR. GIUFFRA: I believe these are  
12   Mr. Ickes' notes. There was a meeting held on  
13   January 16, 1994 at Vernon Jordan's home in which  
14   Mr. Kendall was present and a number of other  
15   people. Do you remember attending that meeting?

16      A    No.

17      Q    Thank you. Have you ever discussed the  
18   Whitewater/Madison Guaranty with Mr. Jordan, the  
19   substance?

20      A    No.

21      Q    Have you ever heard of something called the  
22   Lippo Group?

1 A Yes.

2 Q What is the Lippo Group?

3 A The Riady's company. If you ever go to  
4 Indonesia you see it on every other piece, it's a  
5 very large banking group as I understand, that the  
6 Riadys own in Indonesia.

7 Q Have you ever had any conversations with  
8 anyone with the Lippo Group since January 20, 1993?

9 A Sure.

10 MR. SNYDER: Does this relate in some way  
11 to the subject of these proceedings?

12 MR. GIUFFRA: Yes.

13 MR. KRAVITZ: Well, there is controversy  
14 over that question. I didn't object to the first  
15 broad question, but I'm listening carefully for the  
16 next question, to see if it relates to anything  
17 within the resolution.

18 BY MR. GIUFFRA:

19 Q Which members of the Lippo Group have you  
20 had discussions with since January 20, 1993?

21 MR. KRAVITZ: I object to that question.  
22 Bob, as you and I have discussed in the context of

1 Mr. Hubbell's deposition, if you want to seek to  
2 elicit testimony on the issue of whether anyone, any  
3 White House official or anyone acting on behalf of  
4 any White House official sought to obtain from  
5 Mr. Hubbell an arrangement whereby Mr. Hubbell would  
6 be paid for legal services by the Lippo Group or any  
7 affiliate of the Lippo Group in return for or in the  
8 hopes of Mr. Hubbell's providing less than full  
9 cooperation with the independent counsel or any other  
10 investigating body, I will allow that question or  
11 those questions.

12 MR. GIUFFRA: I don't know whether you are  
13 the person who has the ability to allow or not allow.

14 MR. KRAVITZ: I will allow them at this  
15 stage, those questions, but those are the only  
16 questions that potentially have any relevance to the  
17 inquiries set forth in Senate Resolution 120, and  
18 specifically those are the only questions that could  
19 possibly have any relevance to the credibility of  
20 Mr. Hubbell as a witness before the Committee, and I  
21 should add that is the basis of relevance that  
22 Mr. Chertoff stated at the public hearing that

1 Mr. Hubbell testified at most recently at which this  
2 issue arose. So it's not just me speaking here, this  
3 is the manner in which your Special Counsel framed  
4 the issue and stated the relevance.

5 MR. GIUFFRA: The question is simply who has  
6 he spoken to since January 20, 1993.

7 MR. KRAVITZ: I'm going to ask the witness  
8 not to answer that question unless it's focused more  
9 on something relevant.

10 MR. GIUFFRA: So Mr. Lindsey, are you going  
11 to answer that question?

12 MR. SNYDER: What is the pending question?

13 BY MR. GIUFFRA:

14 Q Since January 20, 1993, he said he has  
15 previously testified he spoke to some members of the  
16 Lippo Group. My questions is what --

17 MR. SNYDER: That is a question,  
18 Mr. Kravitz, that you are asking us not to respond  
19 to?

20 MR. GIUFFRA: Even --

21 MR. KRAVITZ: Bob, you choose not to  
22 respond to my --

1 MR. GIUFFRA: Speeches, yes.

2 MR. KRAVITZ: -- to my point.

3 MR. GIUFFRA: I have discovered is not  
4 worth it.

5 MR. KRAVITZ: Well, it may not be worth it  
6 to you, but if you want to make a record here I would  
7 advise you that you ought to make a statement of  
8 relevance. In the absence of that I will instruct  
9 Mr. Lindsey not to answer the question. If you have  
10 any reason to refute anything that I have said about  
11 the basis of relevance or your theory as to why  
12 questions of who Mr. Lindsey spoke with, excuse me,  
13 of who Mr. Lindsey spoke with at the Lippo Group in  
14 some time period after January 20, 1993, if you have  
15 some theory of how his answer to that question is  
16 relevant to any matters set forth in Senate  
17 Resolution 120 I would advise you to state them on  
18 the record. And in the absence of your doing so I  
19 will instruct Mr. Lindsey not to answer the  
20 question.

21 MR. SNYDER: Can we take a short recess.  
22 (Recess.)

1 MR. GIUFFRA: My last question was who,  
2 since January 20, 1993, who at the Lippo Group,  
3 Mr. Lindsey had spoken to.

4 MR. KRAVITZ: That was the question I  
5 instructed Mr. Lindsey not to answer. While we were  
6 off the record -- excuse me --

7 MR. GIUFFRA: You have been giving speeches  
8 for the last five minutes. Excuse me.

9 MR. KRAVITZ: Don't interrupt me. You  
10 interrupted me --

11 MR. GIUFFRA: No, that is not true. I'm  
12 going to say something now.

13 MR. KRAVITZ: I was speaking. While we  
14 were off the record --

15 MR. GIUFFRA: I have asked him a question.

16 MR. KRAVITZ: He has already been  
17 instructed not to answer the question.

18 MR. GIUFFRA: Are you his lawyer?

19 MR. KRAVITZ: I can instruct him not to  
20 answer the question.

21 MR. GIUFFRA: Let's call the Chairman right  
22 now to find out what he thinks.

1 MR. KRAVITZ: Go ahead. While we were off  
2 the record Mr. Snyder made a recommendation and you  
3 come in starting to ask a question you know the  
4 witness has been instructed not to answer. I think  
5 Mr. Snyder's suggestion, which I would like him to  
6 put on the record, was a perfectly reasonable  
7 suggestion. He offered that Mr. Lindsey would  
8 answer every single question conceivably that could  
9 be relevant to this, to what is already an  
10 extraordinary collateral issue under Senate  
11 Resolution 120. You choose not even to allow  
12 Mr. Snyder to put his suggestion on the record.

13 I'm going to interrupt you, actually I  
14 didn't interrupt you. It's part of my objection to  
15 your repeating a question that Mr. Lindsey has  
16 already been instructed not to answer. I'm going to  
17 invite Mr. Snyder to put his suggestion on the  
18 record.

19 MR. GIUFFRA: First I want to say  
20 something. The issue of the Lippo matter is under  
21 investigation by the Committee, and it would also be  
22 helpful if counsel for the minority did not give



1 coaching objections to witnesses, but that said,  
2 asking Mr. Lindsey the simple question who he spoke  
3 to is obviously relevant because if he only spoke to  
4 Mr. X and Mr. Y and the people who Mr. Hubbell dealt  
5 with were two different people, that is obviously  
6 relevant. If Mr. Hubbell -- can I finish my  
7 statement? I sat here courteously while you were  
8 giving your speeches, a number of them, and --

9 MR. KRAVITZ: "Courteous" is a word that  
10 often comes to mind when people describe you, Bob.

11 MR. GIUFFRA: -- before the interruption,  
12 so therefore it's relevant who he spoke to. I'm not  
13 asking how many times he spoke to the person. I  
14 haven't asked anything beyond who he spoke to. If he  
15 spoke to different people than Mr. Hubbell spoke to,  
16 we can draw one inference. If he spoke to the same  
17 people, we can draw another inference. It's hardly  
18 an unreasonable question, and I would note that the  
19 minority's paranoia about this entire subject matter  
20 is of some interest.

21 The facts are that Mr. Hubbell, after he  
22 had left the Department of Justice and prior to going

1 to prison, had some sort of a business relationship,  
2 this has been reported in the newspapers, with the  
3 Lippo Group. And the Committee is trying to  
4 ascertain whether that business relationship in some  
5 way has impacted upon what he has testified to before  
6 both the Senate and perhaps other forums. But to ask  
7 the simple question who he spoke to, who Mr. Lindsey  
8 spoke to hardly seems to me to be going into a giant  
9 fishing expedition.

10 MR. BEN-VENISTE: Now let me respond --

11 MR. GIUFFRA: No, we can do this --

12 MR. BEN-VENISTE: No, don't tell me "no."  
13 I'm sitting here, you are not going to get away with  
14 that, Mr. Giuffra, so stop. You have done two things  
15 here. Number 1, you have said that the minority was  
16 coaching the witness with its questions.

17 Number 2, you have made a totally  
18 inappropriate reference to paranoia. That is not an  
19 appropriate thing for you to be doing. There was no  
20 reference whatsoever to coaching the witness with  
21 respect to the question. Mr. Kravitz simply invited  
22 counsel, Mr. Snyder, to put on the record a

1 suggestion. Now there is a substantial difference of  
2 opinion as to the relevance of this matter, even as  
3 regards to Mr. Hubbell.

4 To now expand this into some general  
5 inquiry inviting everyone who comes here to be  
6 questioned about this wholly collateral matter is  
7 inappropriate. You have been going here for hours  
8 this morning. Your purpose seems to be not to get  
9 into the area that we will discuss with you once you  
10 reach it, and I'm just hopeful that you will stop  
11 this. It's inappropriate, it's time consuming and  
12 wasteful. Let's try to get finished here and behave  
13 in a more professional way.

14 MR. GIUFFRA: Are you finished?

15 MR. BEN-VENISTE: Yes.

16 MR. GIUFFRA: I would like to speak for a  
17 few seconds here. First of all under Committee  
18 procedure that has been followed on every other  
19 deposition one counsel for each side has been making  
20 objections and asking questions. It appears now that  
21 Mr. Kravitz and Mr. Ben-Veniste would like to tag  
22 team in making objections, and I find it somewhat

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1 disturbing that this is going on and unprofessional,  
2 since that word is being thrown around.

3 Mr. Kravitz is obviously capable of sitting  
4 here and participating in this deposition without  
5 also having Mr. Ben-Veniste also sitting at his elbow  
6 making additional objections and wasting time.

7 MR. KRAVITZ: That's the nicest thing you  
8 have ever said to me, Bob. I appreciate that.

9 MR. GIUFFRA: And with regard to what is  
10 inappropriate and not inappropriate, what the  
11 minority thinks is inappropriate may be a matter that  
12 the majority thinks is entirely relevant and  
13 something the Committee should look into. In fact,  
14 that is what we are attempting to do.

15 With regard to people's professionalism, I  
16 would note for the record that a number of the snide  
17 comments that have been made this morning have been  
18 made by minority counsel, not by majority counsel,  
19 and that has been true in any number of depositions  
20 that have gone on here to date.

21 Why don't we do this, all right.

22 Mr. Lindsey is not going to answer questions about

1 who he spoke to after January 20, 1993, correct?

2 MR. SNYDER: Not precisely, no. Can I take  
3 a turn saying something?

4 MR. KRAVITZ: Why don't you put your  
5 statement on the record.

6 MR. SNYDER: First of all I want to make  
7 clear Mr. Lindsey doesn't have a position on these  
8 issues. There has been a suggestion made by the  
9 minority counsel that it's inappropriate to go into  
10 this area. There is obviously a disagreement between  
11 counsel. We don't have a position. We don't take a  
12 position. We will follow whatever is the ultimate  
13 decision. But the suggestion I made when we were off  
14 the record to try to see if we could respond to your  
15 concerns was that you might wish, Mr. Giuffra, to ask  
16 Mr. Lindsey whether he ever had any discussion with  
17 anyone that related in any way to any relationship  
18 between Mr. Hubbell and this Lippo Group, and I  
19 assume that there wouldn't be an objection, from what  
20 I heard, to his answering that question.

21 Secondly, to try to go beyond that, I  
22 suggest you might want to also ask whether beyond

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1 that Mr. Lindsey has any knowledge of anything that  
2 relates in any way to the Lippo Group and any subject  
3 discussed in the Senate Resolution, and I assume he  
4 could answer that question. And perhaps if you ask  
5 and answered those questions it might simplify some  
6 of these issues.

7 MR. GIUFFRA: We certainly appreciate your  
8 willingness to answer certain questions regarding the  
9 Lippo Group. I still would state for the record that  
10 the question that I asked, who has he spoken to, I  
11 haven't asked how many times or haven't asked about  
12 what subject, simply who, is a perfectly appropriate  
13 predicate question for the questions that you would  
14 have Mr. Lindsey answer.

15 MR. SNYDER: I'm not stating an objection.  
16 I just made a suggestion that I thought might  
17 simplify this issue and maybe even moot it, but it's  
18 up to you and others to decide.

19 MR. KRAVITZ: Just seems to me since there  
20 is certainly a possibility Mr. Lindsey had  
21 conversations with officials of the Lippo Group that  
22 have no relation to Mr. Hubbell, why don't we just

1 ask the question whether Mr. Lindsey after  
2 January 20, 1993 had any conversations with anyone  
3 representing the Lippo Group or its affiliates about  
4 Mr. Hubbell, and I also -- all of the suggestions  
5 that Mr. Snyder made of questions are questions that  
6 I do not object to. I also would not object to  
7 Mr. Giuffra asking the question whether Mr. Lindsey  
8 knew of any efforts by anyone at the White House or  
9 anyone representing anyone at the White House to  
10 affect Mr. Hubbell's level of cooperation by  
11 obtaining legal work for him with the Lippo Group or  
12 its affiliates. But as I have stated previously,  
13 that is the one thin reed of relevance of all of  
14 this. Potentially --

15 MR. GIUFFRA: I have no problem with asking  
16 those questions, but I think those questions in a  
17 vacuum without asking who at the Lippo Group he has  
18 spoken to leaves a misimpression on the record.

19 MR. KRAVITZ: What are you going to do  
20 between now and next Thursday, depose everyone at the  
21 Lippo Group?

22 MR. SNYDER: Without --

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1 MR. GIUFFRA: Clearly it's relevant. If  
2 the same people who Mr. Hubbell was dealing with at  
3 the Lippo Group were also people that Mr. Lindsey was  
4 speaking to on a regular basis, that is relevant,  
5 because there is a possibility the subject may have  
6 been mentioned. Mr. Lindsey may not recall the  
7 subject being mentioned, but the fact that  
8 Mr. Hubbell and Mr. Lindsey were talking to the same  
9 people at the Lippo Group during this period is  
10 relevant.

11 MR. SNYDER: Can I briefly ask Mr. Lindsey  
12 a question without anybody waiving any rights to  
13 anything else?

14 MR. SNYDER: Mr. Lindsey, have you ever had  
15 any discussion with anyone affiliated with the Lippo  
16 Group with regard to any business relationship or  
17 potential business relationship between the Lippo  
18 Group or any of its affiliates and Mr. Web Hubbell?

19 THE WITNESS: Not that I recall, no.

20 MR. SNYDER: Have you ever had any  
21 discussion with anyone affiliated with the Lippo  
22 Group about any subject that relates in any way,



1 shape or form to any matter within the scope of the  
2 Senate Resolution that we are here today dealing  
3 with?

4 THE WITNESS: None.

5 MR. KRAVITZ: Resolution 120.

6 THE WITNESS: No.

7 BY MR. GIUFFRA:

8 Q Okay. In response to the first question,  
9 Mr. Snyder asked you have you ever spoken to anyone  
10 affiliated with the Lippo Group about Mr. Hubbell.  
11 You answered, "I don't recall." Correct?

12 MR. KRAVITZ: I think he said "not that I  
13 recall."

14 THE WITNESS: Not that I recall.

15 BY MR. GIUFFRA:

16 Q Not that you recall. Are you saying that  
17 you never could have? Is it possible you could have  
18 spoken to someone affiliated --

19 MR. KRAVITZ: I object to your asking him  
20 to speculate.

21 MR. GIUFFRA: Because unless we know the  
22 regularity with which he spoke with people from the

1 Lippo Group, these answers are all in a vacuum and  
2 leave a misimpression on the record.

3 MR. BEN-VENISTE: The question "is  
4 something possible" means nothing in terms of this.  
5 You know that or should know that.

6 MR. GIUFFRA: More snide comments coming  
7 from the minority staff and unprofessional comments.

8 MR. BEN-VENISTE: Don't you know that by  
9 this point in your career, Bob? You are just wasting  
10 our time.

11 MR. GIUFFRA: Mr. Ben-Veniste, you have  
12 repeatedly said the entire proceeding here is a waste  
13 of time, so --

14 MR. BEN-VENISTE: No, I haven't.

15 MR. GIUFFRA: On any number of occasions.

16 MR. BEN-VENISTE: I said on many occasions  
17 that you waste our time, which you do, and this is  
18 another example.

19 (Witness conferred with counsel:)

20 MR. BEN-VENISTE: Let's move on.

21 BY MR. GIUFFRA:

22 Q Mr. Lindsey, did there ever come a time

1 when you learned that Mr. Hubbell after he left the  
2 Department of Justice was doing work for an affiliate  
3 of the Lippo Group?

4 A I think, yes.

5 Q When did you learn that?

6 A I don't remember.

7 Q And did you learn of the fact that  
8 Mr. Hubbell was doing work for an affiliate of the  
9 Lippo Group prior to the time when Mr. Hubbell went  
10 to jail?

11 MR. BEN-VENISTE: Is it a question whether  
12 he learned it before he went to jail?

13 MR. GIUFFRA: That is the question. Just as  
14 a courtesy I would like to know which one of the  
15 minority counsel present at this deposition are going  
16 to be interjecting --

17 MR. BEN-VENISTE: Once we get through this  
18 period of time I will turn it back to Mr. Kravitz,  
19 the objection making function.

20 MR. SNYDER: Mr. Lindsey would like to  
21 expand the couple last answers.

22 THE WITNESS: I can't remember when we went

1 to Indonesia for the APEC meeting, Asian Pacific  
2 Economic Council. At that time there was some  
3 discussion about a group of Arkansans going to  
4 Indonesia at the same time and being there when we  
5 were there. I believe that Mr. Hubbell was included  
6 in the names of the people that were going to go.  
7 The Riadys or Lippo, I don't know which, has a  
8 relationship with Arkansas because they used to be  
9 part owner of the Worthen Bank and Trust Company.  
10 They were going to fly these Arkansans to Indonesia  
11 to be there. They thought that was a nice gesture,  
12 that the President would like to see Arkansans while  
13 he was over there.

14 I told them I thought it was a bad idea,  
15 that I didn't think that they should do that, that I  
16 didn't think if they did it that I would recommend to  
17 the President that he see the Arkansans while he was  
18 there, and in the end they did not do it. I believe,  
19 as I said, that Web's name may have been on the  
20 list. I believe I may have been told that he was on  
21 the list because he was doing some work for them.  
22 That is the only discussion that I have ever had with

1 anybody about -- again I don't know that for sure. I  
2 don't know that I learned in that conversation that  
3 he was doing work for them, but that is the only  
4 discussion I ever had about Web Hubbell and the Lippo  
5 Group at this point.

6 Q When was this discussion, when did it  
7 occur?

8 A Shortly before we went to Indonesia, which  
9 I think would have been November of maybe 1994.

10 Q Who did you speak with about Mr. Hubbell?

11 A I don't believe I actually spoke to anybody  
12 with, well, I believe I spoke to Doug Buford. Our  
13 law firm, by the way, my former law firm does some  
14 work for either the Riady or the Lippo Group or  
15 somebody associated with them.

16 Q And did Mr. Buford indicate to you that  
17 Mr. Hubbell was someone who possibly might be going  
18 on this trip to Indonesia?

19 A I believe so.

20 Q Did he indicate to you why the Arkansans  
21 would be going to Indonesia?

22 A He indicated to me they thought that it was

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1 a nice gesture. There is, by the way, a sister state  
2 relationship between Arkansas and Indonesia. And I  
3 think the Riadys believed that the President when he  
4 is in Indonesia would like to see a group of  
5 Arkansans and that it would be a nice gesture. I  
6 told them I did not think it would be appropriate.

7 Q And why did you tell Mr. Buford that it  
8 would be appropriate to have these Arkansans visit?

9 MR. SNYDER: Inappropriate.

10 BY MR. GIUFFRA:

11 Q Yes, why did you not think it was  
12 appropriate.

13 MR. BEN-VENISTE: I can't hear you.

14 BY MR. GIUFFRA:

15 Q Why did you not think it was appropriate?

16 A I could just see a story, all the press  
17 goes with us. President shows up or goes to an event  
18 and there's 20 Arkansans there, the question is how  
19 did these 20 Arkansans show up in Indonesia when the  
20 President does, you know. It just didn't seem, I  
21 have been around this town now for three years and it  
22 didn't seem quite right to me. And I told him I

1 thought it was a stupid idea.

2 Q Did you discuss this proposal to have the  
3 Arkansans visit Indonesia with the President with  
4 anyone else at the White House?

5 A Yes.

6 Q Who did you discuss it with at the White  
7 House?

8 A Mack.

9 MR. BEN-VENISTE: Sorry, didn't hear that  
10 question.

11 BY MR. GIUFFRA:

12 Q Who did you discuss it with at the White  
13 House.

14 MR. GIUFFRA: Maybe you could sit over  
15 here. You would hear better.

16 THE WITNESS: Mack, Mack McLarty.

17 BY MR. GIUFFRA:

18 Q And what did Mr. McLarty say?

19 A I think he shared my views.

20 Q Did Mr. McLarty speak with anyone, either  
21 Mr. Buford or anyone else?

22 A I don't know.

1 Q And what was Mr. McLarty's view?

2 A He shared my view, that it was not a smart  
3 thing to do.

4 Q Did you mention to Mr. McLarty the fact  
5 that Mr. Hubbell would be on the trip?

6 A I'm sure I did, yes. There were other  
7 people on the list, too. There were about 20 people,  
8 as I say.

9 Q Who were some of the other people on the  
10 list?

11 A Doug Buford, his wife, Joe Gerard, you  
12 know. The mayor of Little Rock. The vice mayor,  
13 maybe the Governor. I don't remember. There was a  
14 whole group of people, but again I have never had a  
15 discussion with anyone --

16 Q Did you speak with anyone at the Lippo  
17 Group?

18 MR. KRAVITZ: Are you going to allow him to  
19 finish what he was saying?

20 THE WITNESS: I have never had a discussion  
21 with anyone about any sort of relationship, business  
22 relationship, between Web Hubbell and the Lippo



1 Group.

2 BY MR. GIUFFRA:

3 Q Did you ever discuss with Mr. Hubbell at  
4 any time the fact that he was working for the Lippo  
5 Group or had done work for the Lippo Group?

6 A No.

7 Q Did you ever discuss with anyone at the  
8 White House the fact that Mr. Hubbell was doing work  
9 or had done work for the Lippo Group at any time?

10 A Again, in connection with this, if someone  
11 said to me, "Why is Web on this list?" I would have  
12 said, "I think because he does some work for them,"  
13 but I don't remember specifically if that question  
14 was asked. I would have, I think I would have  
15 answered that way.

16 Q Did Mr. Buford indicate to you in any way  
17 what kind of work Mr. Hubbell was doing for the Lippo  
18 Group?

19 A No. My only discussion with Doug was about  
20 whether or not these people were going to go or not.

21 Q Did Mr. Buford indicate to you that there  
22 was any business connection to the proposed trip by

1 the Arkansans to Indonesia, were they there to  
2 solicit business, for example?

3 A I believe they were going to announce some  
4 sort of relationship between the medical center and a  
5 medical institution, hospital of some sort in  
6 Indonesia, I think that actually was announced, and I  
7 think actually a person who did go was someone  
8 connected with one of the hospitals in Little Rock,  
9 because they were announcing this medical  
10 relationship. As far as I remember, that was the  
11 only relationship issue that came up with respect to  
12 the trip.

13 Q Did you have a concern about including  
14 Mr. Hubbell on this trip because of the fact that he  
15 had pled guilty to several federal criminal charges  
16 at the time?

17 A I don't believe he had.

18 MR. KRAVITZ: I think Mr. Hubbell entered  
19 his guilty plea of December of 1994. Mr. Lindsey  
20 has testified he believes that this trip was in  
21 November of 1994.

22 THE WITNESS: Yes.

1 BY MR. GIUFFRA:

2 Q I stand corrected. I believe there were  
3 press accounts, though, about Mr. Hubbell's  
4 difficulties in November of 1994; is that correct?

5 A There were --

6 MR. BEN-VENISTE: He testified nobody  
7 should go. What are you doing here wasting our  
8 time?

9 THE WITNESS: There were press accounts in  
10 July or June or whenever he left the Justice  
11 Department that there were conflicts with his law  
12 firm. I don't really remember that many accounts  
13 between then and the time he announced the plea  
14 agreement about this. I don't believe that this was  
15 a major topic, that Mr. Hubbell was a major topic in  
16 the press at this time.

17 MR. KRAVITZ: Did Mr. Hubbell's  
18 difficulties to the extent you knew about them have  
19 anything to do with the formation of your view that  
20 it was a bad idea for these 20 Arkansans to go to  
21 Indonesia on this trip?

22 THE WITNESS: Only to the extent that Web

1 Hubbell would be a more recognizable member of this  
2 delegation to the press, who would have seen this  
3 group, and that his presence there would make this  
4 group sort of stand out. Not in any sense other than  
5 that. There were, the other 20 people to the press  
6 would not have registered, but not anything  
7 specifically related to his problems, no.

8 BY MR. GIUFFRA:

9 Q Did you tell the President that Mr. Hubbell  
10 wanted to go, was one of the people who was going to  
11 be on this trip, potentially?

12 A Don't recall. I told him that there was a  
13 group of Arkansans and that I basically had killed  
14 it.

15 Q So you spoke to Mr. Buford, Mr. McLarty,  
16 the President about this proposal that the Arkansans  
17 come. Can you think of anyone else?

18 A Yes. One more.

19 Q Who else?

20 A I explained it to Mr. Riady.

21 Q And what --

22 A James Riady.

1 Q And did Mr. Riady call you?

2 A No, this was while we were there.

3 Q What do you recall about the conversation  
4 you had with Mr. Riady?

5 A My understanding from, I think Doug, was  
6 that, I don't quite know how to say this. They took  
7 this as some sort of an act of non-friendship or  
8 something. Again, and I just, so I told, I said I  
9 would explain to him what my thinking was, that we  
10 appreciated his desire to do this, that we understood  
11 his motivation for doing it, that I just didn't think  
12 that it was a good idea --

13 Q Was there any discussion of Web Hubbell  
14 with Mr. Riady?

15 A No.

16 Q So it's your testimony you have never  
17 discussed Web Hubbell with anyone affiliated with the  
18 Lippo Group?

19 A I don't believe. Well --

20 Q Other than this conversation with  
21 Mr. Buford?

22 A I don't believe so. No.

1 Q Do you have any understanding as to whether  
2 anybody at the White House including the President  
3 and Mrs. Clinton have ever discussed Mr. Hubbell with  
4 anyone affiliated with the Lippo Group?

5 A I have no knowledge of that, no.

6 Q Now, Mrs. Hubbell works at the Department  
7 of Interior?

8 A Correct.

9 Q Did there come a time when an issue arose  
10 as to whether she should be able to keep her job at  
11 the Department of Interior?

12 MR. SNYDER: This is a very old topic and  
13 certainly one that we were not led to believe was the  
14 subject of today's deposition. I'm not really  
15 objecting, but we are now into the afternoon and this  
16 wasn't even the primary focus of today's deposition.  
17 None of what we have covered this morning was.

18 THE WITNESS: Mrs. Hubbell --

19 MR. BEN-VENISTE: What are you opening up  
20 now? Do you really want to open up now to the  
21 question of hiring spouses?

22 BY MR. GIUFFRA:

1 Q You were about to answer the question  
2 before you were interrupted.

3 MR. BEN-VENISTE: It's 20 minutes to 1:00  
4 in the afternoon.

5 MR. GIUFFRA: You don't have to be here,  
6 Mr. Ben-Veniste. The minority side is represented by  
7 Mr. Kravitz. Perhaps you are here because you would  
8 like to --

9 MR. BEN-VENISTE: Perhaps your purpose is  
10 just wasting my time to the point where you hope I  
11 will go away. That is just not going to happen.

12 MR. KRAVITZ: Because you know in the four-  
13 corners offense we referred to earlier their clock  
14 could run out, but it's not going to happen here.

15 MR. BEN-VENISTE: You are just embarrassing  
16 yourself.

17 MR. GIUFFRA: I think the person  
18 embarrassing himself is you, but that is beside the  
19 point.

20 MR. BEN-VENISTE: I think it is beside the  
21 point because your judgment on this matter is well  
22 documented. You are not going to go through every

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1 tiny scrap of information that has been covered  
2 before. We had an agenda to cover here today. I  
3 think that the things you are talking about are  
4 totally collateral.

5 MR. GIUFFRA: If you would stop obstructing  
6 the deposition we could have answered this question  
7 and be done with it by now, but it seems to be your  
8 goal today to --

9 MR. BEN-VENISTE: I will instruct him not  
10 to answer the question. Get to something that we  
11 have talked about. If you have anything more to do,  
12 then we will do it. Otherwise we will get a ruling  
13 from the Chairman and ranking member. You are at the  
14 point where you are simply harassing not only the  
15 witness but us, and if we have to get the Chairman to  
16 make the ruling, we will do that.

17 MR. GIUFFRA: All right. We will hold this  
18 under advice. You are instructing him not to answer  
19 any questions about the circumstances surrounding  
20 Mrs. Hubbell and her job at the Department of  
21 Interior?

22 MR. BEN-VENISTE: You got it.



1 BY MR. GIUFFRA:

2 Q Have you ever had any discussions with  
3 anyone at the White House after Mr. Hubbell left the  
4 Department of Justice about financial problems that  
5 he might be experiencing because of -- strike that,  
6 just because of financial problems he might be  
7 experiencing?

8 MR. SNYDER: Would you repeat the  
9 question?

10 BY MR. GIUFFRA:

11 Q I will rephrase. After Mr. Hubbell left of  
12 the Department of Justice, did you ever have any  
13 conversations with anyone about financial  
14 difficulties he was experiencing?

15 MR. BEN-VENISTE: Let me suggest this --

16 MR. GIUFFRA: Let him answer the question  
17 before you --

18 MR. BEN-VENISTE: Let me suggest this. If  
19 you want to go into this area, you will get a ruling  
20 from the Chairman. Mr. Hubbell now, the reason for  
21 Mr. Lindsey's deposition was to come here and respond  
22 to questions about notes recently produced. The

1 other area is an area relating to an upcoming trial,  
2 and we will treat that area when you raise it.

3 (Witness conferred with counsel.)

4 MR. BEN-VENISTE: I'm simply going to ask  
5 the witness not to involve himself in answers to  
6 questions where the subject matter is totally  
7 collateral to what he was advised he was coming here  
8 for. If you want to get the Chairman to make a  
9 ruling on that, I'm prepared to discuss it.

10 MR. GIUFFRA: We have had testimony  
11 elicited that with regard to the Lippo Group that  
12 Mr. Lindsey had various information. The questions  
13 I'm asking go directly to that testimony. The whole  
14 subject of the Lippo Group is clearly relevant. The  
15 Chairman believes it's relevant. The majority  
16 believes it's relevant. The minority may have a  
17 different view. We can get a ruling from the  
18 Chairman. I want to have it on the record that  
19 Mr. Lindsey, you will be available to answer more  
20 questions about this once we get the ruling.

21 MR. BEN-VENISTE: We will take the ruling  
22 first, scheduling second.

1 MR. GIUFFRA: No, I want to make sure he is  
2 available to answer the question. I know you want  
3 to --

4 MR. BEN-VENISTE: We will deal with his  
5 attorney, you will deal with his attorney in a  
6 professional way about scheduling depositions, not  
7 ask questions on the record about them. You just  
8 don't have any concept of what it is to deal on a  
9 professional basis with attorneys and witnesses.

10 MR. GIUFFRA: I think Mr. Ben-Veniste that  
11 you are the person who has no concept of how to  
12 deal -- no, it's an opinion shared by many members of  
13 the majority staff who have had to deal with you and  
14 I gather other lawyers during your career, and I can  
15 state that since, when I graduated from law school in  
16 1987 I have never had to deal with anyone as  
17 unprofessional and rude as you are.

18 MR. BEN-VENISTE: That is because you  
19 haven't had any experience in practicing law.

20 MR. GIUFFRA: I would just also note for  
21 the record as on other occasions before  
22 Mr. Ben-Veniste injected himself into the deposition

1 and started obstructing it none of this nonsense went  
2 on, but this seems to be part of his modus operandi  
3 to prevent the Committee -- let me finish -- what  
4 Mr. Ben-Veniste does not want is for us to inquire  
5 into various matters. Clearly Mr. Hubbell's  
6 testimony before the Committee has changed over  
7 time. He happens to learn new information. He is a  
8 convicted felon, and his testimony has been very, he  
9 knows about many subjects related to those under  
10 investigation. Mr. Ben-Veniste clearly wants to  
11 prevent any inquiry into factors that may bear on his  
12 testimony. I would note for the record  
13 Mr. Ben-Veniste did not have such reticence when it  
14 came to Jean Lewis and many other witnesses that have  
15 been before the Committee. But that is just an  
16 example of the defense mindedness of his actions  
17 throughout the proceedings.

18 MR. BEN-VENISTE: My recollection is Jean  
19 Lewis testimony was substantially truncated.

20 MR. GIUFFRA: You don't want to answer any  
21 questions about this based on his statements. I will  
22 call the Chairman sometime today or over the weekend

1 and hopefully come back and answer them later.

2 MR. BEN-VENISTE: Fine.

3 MR. SNYDER: With reference to the last  
4 question, I will note that based on Mr. Lindsey's  
5 earlier answers to your questions I think he stated  
6 that he did not have any discussions that would have  
7 related in any way to Mr. Hubbell's business  
8 relationships with the Riady group, and so I think  
9 that would apply to your current question, as well.  
10 But I don't think --

11 BY MR. GIUFFRA:

12 Q Mr. Lindsey can answer the question and we  
13 won't have the problem, won't have to go to the  
14 Chairman and won't waste time as we have for the last  
15 10 minutes. The question is after the time  
16 Mr. Hubbell left the Department of Justice, did you  
17 have discussions with anyone about financial  
18 difficulties he might be having or his financial  
19 situation, period.

20 MR. SNYDER: Mr. Giuffra, what I just said  
21 was what I think he has testified, that he had no  
22 discussions that relate to the Riady group and

1 Mr. Hubbell's financial difficulty or business  
2 relationships other than what he already testified  
3 to. The question of whether he might have ever  
4 talked to anybody about Mr. Hubbell and the fact that  
5 Mr. Hubbell, anything else about Mr. Hubbell in sort  
6 of a general way unrelated to the Riady group I think  
7 is a very different question, and I assume has no  
8 relationship to anything that we are here today  
9 about.

10 MR. BEN-VENISTE: It doesn't, so please  
11 move on.

12 MR. GIUFFRA: So you are instructing him  
13 not to answer the last question?

14 MR. BEN-VENISTE: Right.

15 MR. GIUFFRA: Not you, Mr. Ben-Veniste.  
16 Mr. Snyder, who is a very courteous person. Someone  
17 you could learn from.

18 MR. SNYDER: I disclaim involvement in  
19 such.

20 MR. GIUFFRA: All Mr. Ben-Veniste's  
21 transcripts read like this. He likes it that way.

22 MR. SNYDER: I am not instructing

1 Mr. Lindsey --

2 BY MR. GIUFFRA:

3 Q If Mr. Lindsey can answer the question, we  
4 can be done with it.

5 MR. BEN-VENISTE: I'm telling you for the  
6 third time to move on to something relevant, if you  
7 have anything more relevant.

8 MR. GIUFFRA: I'm entitled to make a record  
9 as to the questions I want answered that you are  
10 instructing him not to answer.

11 MR. BEN-VENISTE: You have killed more  
12 trees with your records Mr. Giuffra. Let's move on.

13 MR. GIUFFRA: I think you are the one who  
14 kills trees with your obstruction.

15 MR. SNYDER: My understanding is there a  
16 pending question. There is an instruction from  
17 Mr. Ben-Veniste not to answer. Based on what I just  
18 said, my understanding is that the pending question  
19 doesn't relate in any way to Senate Resolution 120 or  
20 to the Lippo Group. I'm not instructing Mr. Lindsey  
21 not to answer. I simply need to learn what the  
22 resolution of this is among the Committee.

1 MR. GIUFFRA: We will get a ruling during  
2 the break. Let me just ask the other question, which  
3 would be whether you have had any conversations with  
4 anyone at the White House about Mr. Hubbell's  
5 financial situation or business relationships after  
6 the time Mr. Hubbell left the Department of Justice.

7 MR. SNYDER: I need clarification from the  
8 minority as to whether their objection and  
9 instruction lies with that question.

10 MR. BEN-VENISTE: Please read it back.  
11 (The record was read as requested.)

12 MR. BEN-VENISTE: Appears to be more or  
13 less the same question that you asked before. Just  
14 wasting time. Moving to --

15 MR. GIUFFRA: If you paid attention --

16 MR. BEN-VENISTE: I'm instructing him not  
17 to answer that question. Please move to something  
18 relevant in terms of where we were designed to go in  
19 this deposition, if you have anything more relevant.

20 MR. GIUFFRA: The record will reflect the  
21 first question was with anyone, the second question  
22 was with the White House, and as to both questions



1 minority counsel is instructing the witness not to  
2 answer. We will try to get a ruling from the  
3 Chairman on both points and then we can go forward  
4 perhaps later today or tomorrow. Let's move to  
5 another subject.

6 BY MR. GIUFFRA:

7 Q Again before we start, I want to state  
8 again for the record that under the rules that have  
9 governed these proceedings heretofore only one  
10 counsel for each side is to object.

11 MR. BEN-VENISTE: If you are talking about  
12 Branscom, I'm going to talk about it, so don't waste  
13 our time further with this.

14 MR. GIUFFRA: We have tag team objections  
15 and simply a way to obstruct the deposition and  
16 prevent the Committee from getting the truth and the  
17 facts. We need a separate transcript for this.

18 MR. BEN-VENISTE: While we are waiting,  
19 maybe Mr. Snyder could make a record as to what he  
20 was told the subject matter of the deposition would  
21 be.

22 MR. KRAVITZ: To the extent we have gone to

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1 a separate transcript --

2 MR. GIUFFRA: Let's stay on the first  
3 transcript for a second.

4 MR. BEN-VENISTE: Go ahead, please,  
5 Mr. Snyder.

6 MR. SNYDER: My understanding based on  
7 discussions with Mr. Giuffra was that today's  
8 deposition was going to be on the subject of issues  
9 relating to the Perry County bank and the 1990  
10 Clinton campaign and perhaps more generally issues  
11 that relate to the trial that is scheduled or the  
12 issues related to the trial scheduled of Messrs. Hill  
13 and Branscom scheduled to start on June 17, and that  
14 in addition there might be questions relating to  
15 follow up on the documents that Mr. Lindsey produced  
16 to the Committee since his last appearance before the  
17 Committee.

18 MR. GIUFFRA: Just one thing before we go  
19 to the next one. I want to ask you one thing about  
20 Attachment B to the most recent, or March  
21 production. Says here "Web," could you just read  
22 that one entry?

1 A "Web" --

2 MR. BEN-VENISTE: What document?

3 MR. GIUFFRA: Attachment B.

4 MR. SNYDER: It doesn't have a document  
5 number. It was Attachment B to a letter of ours that  
6 was, the date of which was stated earlier.

7 MR. KRAVITZ: March 1, 1996.

8 BY MR. GIUFFRA:

9 Q Could you read that entry?

10 A "Web never heard of Hale or company." I  
11 think I explained earlier that is probably not  
12 correct, but that is what I wrote down.

13 Q Just one last question. After the recent  
14 convictions of Governor Tucker and Mr. McDougal, were  
15 you present when President Clinton spoke to Governor  
16 Tucker?

17 A No.

18 Q Do you know what he spoke to Governor  
19 Tucker about?

20 A I know what the press reports are that he  
21 spoke about.

22 Q You have no other information other than

1 what is in the press reports?

2 A No.

3 MR. GIUFFRA: Neal, if you want to ask him  
4 questions about subjects that have been covered so  
5 far, they will be on this transcript.

6 MR. KRAVITZ: I have no follow-up  
7 questions.

8 MR. GIUFFRA: Okay. Let's start the new  
9 transcript. Let's take a break for five minutes.

10 (Recess at 12:56 p.m.)

11 (Remainder of transcript under seal per  
12 order of Committee Chairman.)

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**DEPOSITION OF BRUCE R. LINDSEY  
IN RE: S. RES. 120**

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**SATURDAY, JUNE 8, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of BRUCE R. LINDSEY, called for examination pursuant to notice of deposition, at 1:07 p.m. in Room 538 of the Dirksen Senate Office Building, before SHEILA M. LYONS, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.  
Majority Chief Counsel  
RICHARD BEN-VENISTE, Esq.  
Minority Special Counsel  
NEAL E. KRAVITZ, Esq.  
Minority Principal Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

ALLEN R. SNYDER, Esq.  
Hogan & Hartson  
555 Thirteenth Street, NW  
Washington, DC 20004  
On behalf of the Deponent.



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## EXHIBITS

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Bruce R. Lindsey DEPOSITION NUMBER	IDENTIFIED
Deposition Exhibit 1 .....	8, 7829
Deposition Exhibit 2 .....	9, 7831
Deposition Exhibit 3 .....	25, 7913
Deposition Exhibit 4 .....	28, 7915

1 Whereupon,

2 BRUCE R. LINDSEY

3 was called as a witness and, having previously been  
4 duly sworn, was examined and testified further as  
5 follows:

6 (CONFIDENTIAL PORTION OF TRANSCRIPT,  
7 BEGINNING AT 1:07 P.M.)

8 BY MR. GIUFFRA:

9 Q Mr. Lindsey, were you involved in the 1990  
10 Clinton gubernatorial campaign?

11 A Yes.

12 Q What was your role in that campaign?

13 A I was the treasurer.

14 Q And what, as treasurer what were your  
15 responsibilities in that campaign?

16 A Basically to file campaign disclosure  
17 documents.

18 Q Did you have any other responsibilities?

19 A Oh, not as treasurer. I mean basically  
20 that's all the treasurer is responsible for doing,  
21 filing the reports.

22 Q These would be reports that would be filed

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1 with the state of Arkansas?

2 A Correct.

3 Q Did you have any other responsibilities  
4 during the 1990 Clinton gubernatorial campaign?

5 A I guess you would call me a general advisor  
6 to the then-Governor.

7 Q Did you attend meetings of the campaign  
8 staff?

9 MR. BEN-VENISTE: Let me ask at this point  
10 whether your intention is to go into the matters  
11 which are the subject of the upcoming imminent  
12 federal prosecution of Messrs. Hill and Branscom.

13 BY MR. GIUFFRA:

14 Q Those are among the subjects that we intend  
15 to get into today. I advised Mr. Snyder of that fact  
16 yesterday, and as you are aware, Mr. Chertoff and I  
17 spoke with Mr. Kravitz, and I think he may have  
18 spoken with Mr. Chertoff, but I'm not sure about  
19 that, yesterday, and the majority intends to go  
20 forward. In order to deal with any kind of adverse  
21 impact that Mr. Lindsey's transcript might have on  
22 that trial we asked to have a separate transcript and

1 to have special procedures to ensure that it be  
2 remain confidential. I would also note that  
3 Mr. Lindsey's counsel has spoken to The Wall Street  
4 Journal on some of the subjects that we are going to  
5 get into today that have been reported. There have  
6 also been news reports in near times about these  
7 subjects.

8 In addition the Committee has, during  
9 hearings that we held prior to the Tucker/McDougal  
10 trial, also during the Tucker/McDougal trial, we  
11 addressed many subjects that came up during that  
12 trial. We have not received any kind of notification  
13 formally from the Court in Little Rock, and the  
14 Committee has asked the Independent Counsel whether  
15 our examination of Mr. Lindsey would hinder or impede  
16 Independent Counsel's investigation, and the  
17 Independent Counsel did not indicate to us that our  
18 examination of Mr. Lindsey would in any way impact  
19 upon the Independent Counsel's investigation.

20 MR. BEN-VENISTE: Where was that  
21 communication?

22 MR. GIUFFRA: I think we sent a letter with

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1 Mr. Lindsey's name on it.

2 MR. BEN-VENISTE: Where was that, do you  
3 have that?

4 MR. GIUFFRA: We will go get it. Take a  
5 break.

6 (Recess.)

7 MR. GIUFFRA: Let's go on the record.

8 MR. BEN-VENISTE: We are waiting for  
9 Mr. Giuffra to try to locate the letter referencing  
10 Mr. Lindsey from the office of Independent Counsel  
11 that he had mentioned, but I'm not sure what  
12 procedure is being proposed. You have a separate  
13 transcript being made, but I'm not sure what use of  
14 this deposition, to what use this deposition will be  
15 put, so maybe you could outline that, and then I will  
16 respond to you.

17 MR. GIUFFRA: No decision has been made yet  
18 as to what use the deposition will be put. Perhaps  
19 Mr. Lindsey, I don't want to foreclose any  
20 possibility, might be called as a witness, might be  
21 incorporated into the report, might be released at  
22 the same time the report is released, might be

1 released at some time thereafter. But in order to  
2 deal with the minority's concern about this matter,  
3 in order to get the testimony, get the facts before  
4 the Committee, the subject that is within the  
5 Resolution, we were going to accommodate your concern  
6 by having a separate transcript.

7 MR. BEN-VENISTE: Okay. Let me then  
8 address I think the most serious problem that is  
9 proposed here, and that is the problem of the  
10 upcoming Hill and Branscom trial. Mr. Giuffra  
11 mentioned that no formal instruction has been  
12 received by the Court. That would be the Honorable  
13 Susan Webber Wright, the United States District Court  
14 Judge in the Eastern District of Arkansas, who is  
15 presiding over the trial of Herbie Branscom and  
16 Mr. Hill. That trial is scheduled to begin  
17 June 14 -- June 17, which coincides with the date our  
18 final report is due.

19 Now, there is a letter that I would make  
20 reference to, dated April 30, 1996. Let's mark that  
21 as Exhibit 1. That is a letter to Mr. Chertoff and  
22 myself from John Bates. Okay. Well, we will

1 substitute a clean copy for it, if you will mark it  
2 Exhibit 1, or let's refer to it as Exhibit 1.

3 (Deposition Exhibit 1 identified.)

4 MR. BEN-VENISTE: In that letter there is  
5 reference to the identification of 10 individuals the  
6 Committee had identified to the Office of Independent  
7 Counsel as potential witnesses relating to the  
8 subject matter of the Branscom and Hill trial, and in  
9 there Mr. Lindsey's name is not included. However,  
10 in the letter reflecting objection to certain of the  
11 individuals being questioned, Mr. Bates states that,  
12 "Pretrial disclosure of such testimony would  
13 seriously disrupt this office's trial preparation and  
14 perhaps dramatically alter the conduct of the  
15 upcoming trial. It would also seriously jeopardize  
16 our continuing investigation. Finally, it could also  
17 lead to claims by the criminal defendants that they  
18 suffered prejudice to their right to a fair trial."

19 So in conclusion, Mr. Bates states that  
20 "examination of these witnesses prior to completion  
21 of the trial would hinder or impede our  
22 investigations and prosecutions." So there is no



1 indication that Mr. Lindsey was identified by the  
2 majority here as a potential witness who would be  
3 questioned. So I am eager to see this other letter  
4 that has been referenced.

5 Now subsequent to the April 30 letter,  
6 there was a proceeding on May 9, 1996 and I would  
7 like to mark as Exhibit 2 some portions of that  
8 transcript, which were rather extensive. Apparently  
9 a number of pretrial issues came up in that matter.

10 (Deposition Exhibit 2 identified.)

11 MR. BEN-VENISTE: In that proceeding, and I  
12 would begin at page 69, counsel for, I guess Mr. Hill  
13 or counsel for Mr. Branscom, who is Mr. Guthry,  
14 raised the issue with Judge Wright that the Senate  
15 Committee chaired by Senator D'Amato had issued five  
16 subpoenas to individuals, some of whom may be  
17 witnesses in the case, concerning matters that are  
18 covered by the allegations in the indictment.

19 Mr. Guthry pointed out that these subpoenas  
20 call for the production of records only and  
21 specifically mention that they went to Perry County  
22 Bank, the White House and to Bruce Lindsey,

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10

1 specifically. Now of course at that time in May then  
2 it was not known that Mr. Lindsey would be subpoenaed  
3 to be questioned by the Committee about that matter.

4 Now, the question was obviously raised that  
5 if there were prejudicial pretrial material generated  
6 as a result of something the Committee did, that that  
7 would be unfortunate, and that the defense would be  
8 obliged, among other remedies, to request a  
9 continuance of the trial. It appears that the  
10 defense counsel were not asking the Court to do  
11 anything, but simply apprising the Court of its  
12 position.

13 Then at page 71 Judge Webber indicated that  
14 she had read about the subpoenas in The Wall Street  
15 Journal, in the Arkansas Democrat, but was not aware  
16 of any testimony that had been taken, and it's  
17 correct that up to that point no testimony had been  
18 taken, to my knowledge, by this Committee.

19 Then Mr. Ewing, representing the United  
20 States as a representative of the Office of  
21 Independent Counsel made a statement and made  
22 reference to a report issued by the Committee,

1 actually by the majority of the Committee, when they  
2 were trying to extend the life of the Committee, and  
3 he said that, "I think when they were trying to  
4 extend the Committee and they actually had a report  
5 to the effect that we have been hindered because four  
6 people have indicated they would take the Fifth  
7 Amendment; Chris Wade, Rose Lee Wade, Herbie Branscom  
8 and Rob Hill. This was in a public report. This was  
9 in the media," and then made reference to whether or  
10 not the potential jury pool might have or might, as  
11 they would later find out, come in contact with that  
12 publicity and be affected by it.

13 The Judge then went into some discussion  
14 about her view of press reports, the separation of  
15 powers between the judiciary and the legislative  
16 branch, and the upshot of which was for her to direct  
17 Mr. Ewing to advise Senator D'Amato that the Court is  
18 concerned. "The concern is a concern about" --

19 MR. GIUFFRA: What page are you quoting  
20 from?

21 MR. BEN-VENISTE: Page 75. And the concern  
22 that the Court referred to is one of providing a fair

12

1 trial and considering any motions for continuance  
2 that might result from prejudicial publicity  
3 emanating from the trial. The Court made clear that  
4 she would not ask directly that Senator D'Amato do  
5 anything or refrain from doing anything --

6 MR. GIUFFRA: I object to the reference to  
7 Senator D'Amato in your summing up. Senator D'Amato  
8 is not the Committee in and of himself.

9 MR. BEN-VENISTE: Why are you interrupting  
10 me to tell me that? At page 76, Mr. Giuffra, "I  
11 don't think you can anticipate my interfering with  
12 Senator D'Amato's investigation," is what Judge  
13 Webber said. She went on to say that, "That does not  
14 mean however that you cannot move for a continuance  
15 if you believe your clients cannot receive a fair  
16 trial." And then Judge Starr spoke and talked about  
17 the fair administration of justice, for there to be a  
18 fair trial, and wanted to reassure the Court that he  
19 would articulate those concerns to the United States  
20 Senate.

21 At which point Judge Webber said, beginning  
22 on page 77 and going on to 78, "You might," and I'm

1 quoting, "You might suggest to the Senator that he  
2 not have anything to do with Mr. Branscom and  
3 Mr. Hill and the Perry County Bank in the Whitewater  
4 Committee prior to its expiration on June 14."

5 MR. GIUFFRA: Why don't you read the rest  
6 of it?

7 MR. BEN-VENISTE: I will be pleased to.  
8 "And if he wishes to look into these matters, that  
9 he just do it later as Chairman of the Senate Banking  
10 Committee." Is that the portion you wanted me to  
11 read?

12 MR. GIUFFRA: Yes, thank you.

13 MR. BEN-VENISTE: The Judge then said she  
14 was going to make her suggestion on the record, that  
15 this Committee not get into the Perry County Bank  
16 matter, and that, but suggested that Mr. Starr make  
17 that suggestion to Chairman D'Amato, and then  
18 reiterated toward the bottom of page 78 that from her  
19 standpoint she would prefer if the Committee would  
20 just hold off and avoid generation of other possible  
21 problems for her and for the fairness of the trial.

22 Now, it's quite clear that Judge Webber's

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1 concern was not just to the question of public  
2 hearings. It seems quite unlikely that the Committee  
3 will have any public hearings in the time remaining  
4 relating to the Hill and Branscom trial or Perry  
5 County Bank, but there are other problems, as  
6 Mr. Giuffra candidly set forth, one of which would be  
7 the release of this deposition; another would be the  
8 leaking of material, which unfortunately has occurred  
9 during the course of this investigation; and finally  
10 the possibility that this subject matter could find  
11 its way into the final report, which is due to be  
12 issued on the very day the trial is to start, which  
13 of course would generate publicity.

14 I think Mr. Chertoff has acted responsibly  
15 and properly in canceling at least two depositions of  
16 individuals who were to testify about Perry County  
17 matters. That would be Mr. Rush Deacon and Mr. Kent  
18 Dollar.

19 Now, there is a further problem that I  
20 think exists here, and that is that it is publicly  
21 known that the Democratic minority on this Committee  
22 has protested the practice of ex parte communications

1 between the majority and the Office of Independent  
2 Counsel. I think there is another danger that is  
3 raised here, and it is a very substantial danger, and  
4 that is the perception, were there to be publicity  
5 relating to this matter, that an argument could be  
6 put forth by the defense that inasmuch as the Office  
7 of Independent Counsel as prosecutor representing the  
8 government would be foreclosed from utilizing  
9 compulsory process or grand jury subpoenas to obtain  
10 sworn testimony in connection with the matter which  
11 is about to be tried, that it could be said or could  
12 be argued, and I have no reason to believe that this  
13 would occur, but could be argued that there was  
14 communication relating to questions possibly put to  
15 witnesses as between the majority and the Office of  
16 Independent Counsel. Such an argument, of course,  
17 would be a very serious one in terms of the  
18 administration of justice in view of the respective  
19 responsibilities of the respective branches here.  
20 I'm not at all suggesting that there would be or is  
21 any merit to that.

22 MR. GIUFFRA: And there is none.

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1 MR. BEN-VENISTE: It is just another item  
2 that in my view suggests that balancing what we would  
3 propose to get by questioning but one witness about  
4 the subject matter on the eve of trial, since we  
5 cannot obviously do a comprehensive or balanced  
6 inquiry into the Perry County matter, although it is  
7 properly within the scope of our Resolution to do so,  
8 the fact that we have as a Committee waited so long  
9 in getting into this matter that we are now on the  
10 eve of the criminal trial where we could certainly on  
11 the one hand not provide any kind of a detailed or  
12 balanced picture about this subject matter, but could  
13 through inadvertence or otherwise interfere with the  
14 trial that is scheduled to begin within days, so  
15 under all of those circumstances it is my view that  
16 it would be inappropriate to release the testimony of  
17 Mr. Lindsey on this matter in our final report,  
18 because that would certainly add to publicity. If it  
19 were not to be released through legitimate means, but  
20 leaked it, that would be even worse.

21 And finally, if it is not to be released,  
22 then I question what possible utility it would have



1 to this Committee, since we go out of existence on  
2 the 17th with the issuance of our final report.  
3 Maybe you could clarify what possible utility could  
4 come from taking this deposition on this subject  
5 matter as balanced against the obvious concerns of  
6 the Federal District Judge, the prosecutor and the  
7 defense counsel, who have written to us expressing  
8 their concerns.

9 MR. GIUFFRA: Have you concluded?

10 MR. BEN-VENISTE: Yes.

11 MR. GIUFFRA: Thank you. I would just note  
12 that with regard to the letter to the Committee by  
13 the Independent Counsel of September 27, 1995, that  
14 in that letter the Independent Counsel raised the  
15 same objection that was raised with regard to the  
16 Perry County Bank with regard to our investigation  
17 into Madison Guaranty, Whitewater Development  
18 Corporation, and a number of other subjects. And the  
19 Committee made the judgment that it would go forward  
20 and that its investigatory needs required it to go  
21 forward and that was the view that was expressed to  
22 the Independent Counsel by both Chairman D'Amato and

1 Senator Sarbanes. In fact, Senator Sarbanes on a  
2 number of occasions during the hearings indicated  
3 that the Committee had an obligation to go forward,  
4 notwithstanding concerns expressed by the Independent  
5 Counsel in the September 27, 1995 letter.

6 I would also note that the Committee was  
7 able to conduct public hearings with regard to  
8 Madison Guaranty and the operation of Madison  
9 Guaranty in the period leading up to and in fact  
10 during the trial of Governor Tucker and the  
11 McDougals.

12 MR. BEN-VENISTE: Are you finished?

13 MR. GIUFFRA: No. I'm unaware of any  
14 communication between the Office of Independent  
15 Counsel and the Committee after May 9, after this  
16 May 9, 1996 hearing in Little Rock, advising the  
17 Committee of the Independent Counsel or the Judge's  
18 concerns as expressed at this hearing.

19 MR. BEN-VENISTE: First of all, let me  
20 say --

21 MR. GIUFFRA: I'm not finished yet.

22 MR. BEN-VENISTE: You are not?

1 MR. GIUFFRA: No, I'm not.

2 MR. BEN-VENISTE: I'm trying to help you  
3 here because you are not aware there is a May 13  
4 letter from the Office of Independent Counsel to  
5 Senator D'Amato and to Senator Sarbanes. Since you  
6 are not aware of it I want to bring it to your  
7 attention.

8 MR. GIUFFRA: Thank you. Let me look at  
9 it. Can I see the letter?

10 MR. BEN-VENISTE: Yes. Of course I'm going  
11 to point out to you that in that letter, and I'm  
12 delighted that, to be able to provide it to you,  
13 since it doesn't seem to have factored into your  
14 equation of your calling Mr. Lindsey to testify about  
15 that.

16 In the conclusion of Mr. Starr's letter, he  
17 indicates that he requested the Committee accommodate  
18 the important concerns relating to the scheduling of  
19 the remaining hearings. Now, while he does not talk  
20 about depositions and the issuance of a final report,  
21 it is quite clear that from what I have read to you,  
22 if you didn't know it before --

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20

1 MR. GIUFFRA: I recall now seeing this  
2 letter.

3 MR. BEN-VENISTE: -- about Judge Wright's  
4 concerns. Her concerns were with the generation of  
5 publicity, not with particularly the manner in which  
6 that publicity was generated. So I think a fair  
7 reading of Judge Starr, unless Judge Starr has told  
8 you on an ex parte basis that he specifically has no  
9 problem with Mr. Lindsey, who as I understand it may  
10 well be a witness in the trial, that if Judge Starr  
11 has told the majority that he has no problem with  
12 publicizing Mr. Lindsey's testimony in the days  
13 before this trial is to start, then I would like to  
14 know that, because then you will be telling me  
15 something that I didn't know. Have you had such  
16 conversations with the Office of Independent  
17 Counsel?

18 MR. GIUFFRA: Are you finished with your  
19 speech?

20 MR. BEN-VENISTE: I'm asking you a  
21 question.

22 MR. GIUFFRA: I'm not answering. I'm not

1 the witness here. Are you finished with your  
2 speech?

3 MR. BEN-VENISTE: I'm finished putting my  
4 response to your statement on the record.

5 MR. GIUFFRA: Thank you. Would you let me  
6 continue. There have been no communications with the  
7 office of Independent Counsel that I'm aware of on  
8 this subject. This is a very complicated matter and  
9 I don't want to profess to be aware of every  
10 conversation that could occur.

11 MR. BEN-VENISTE: I can't hear you, you are  
12 mumbling. What did you just say?

13 (The record was read as requested.)

14 MR. BEN-VENISTE: That you do or do not  
15 know of any conversation?

16 (The record was read as requested.)

17 MR. BEN-VENISTE: I don't understand what  
18 it means.

19 MR. GIUFFRA: Just prior to that I said I  
20 was not aware of any conversation and I'm not aware  
21 of any conversation in which the Independent  
22 Counsel's office has said anything to us, number 1.

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22

1 Number 2, I resent and am offended by the  
2 absurd political and unfortunate implication that  
3 Mr. Ben-Veniste would put on this record that there  
4 have been any sort of improper communications between  
5 the Office of Independent Counsel and this  
6 Committee. He knows there haven't been. There  
7 haven't been, he knows that, and just to put  
8 something like that on the record is just to  
9 politicize these proceedings.

10 Communications with the Independent Counsel  
11 have been with regard to scheduling matters and  
12 subpoenas and things along those lines, not with  
13 regard to the substance of the investigation. As  
14 Mr. Ben-Veniste well knows there have been no such  
15 communications.

16 MR. BEN-VENISTE: I thought there were  
17 communications about Mr. Hale's testimony and  
18 questions of immunity. If there weren't, then I  
19 think the conversations that we have been party to --

20 MR. GIUFFRA: If you would listen to my  
21 answer, I said about the substance of the Independent  
22 Counsel's investigation. There have been discussions

1 obviously about whether the Independent Counsel would  
2 object to our calling various witnesses. You are  
3 aware of that. There is a paper record with regard  
4 to that subject.

5 I really think the time has come to get  
6 this moving. The decision was made to take the  
7 deposition, we would have a separate transcript with  
8 regard to this deposition. We would put it in the  
9 safe when it came in, and then it would be dealt with  
10 next week. There are any number of possibilities.  
11 For example, perhaps there might be a decision to  
12 have a report issued with regard to Perry County Bank  
13 after the trial is over in order to avoid that  
14 problem. I don't know.

15 MR. BEN-VENISTE: Under what authority?

16 MR. GIUFFRA: The Banking Committee has  
17 authority, Mr. Ben-Veniste. I know you have no  
18 affiliation with the Banking Committee. I  
19 fortunately do, and the Banking Committee clearly has  
20 jurisdiction over Perry County Bank, whether --

21 MR. BEN-VENISTE: Is that the purpose of  
22 taking this deposition now, so that you can later

1 under the Banking Committee release it? Then I think  
2 that this should be deferred.

3 MR. GIUFFRA: I'm not saying that is what  
4 is going to happen.

5 MR. BEN-VENISTE: That is certainly  
6 something that, that should certainly, if you are  
7 speculating about that, then you better say that,  
8 rather than leap to the implication that you have  
9 some authority to do this. In my view there is no  
10 authority existent that would allow this Committee to  
11 issue its report at some time subsequent to the 17th  
12 of June.

13 MR. GIUFFRA: If you would let me finish  
14 again, could you please not interrupt me when I'm  
15 speaking and also keep out --

16 MR. BEN-VENISTE: The record will show I  
17 didn't interrupt you. You are interrupting me now,  
18 but go ahead.

19 MR. GIUFFRA: I sat here for probably 10  
20 minutes, maybe longer, and let you give a long  
21 speech, unnecessary speech, largely unnecessary.

22 MR. BEN-VENISTE: I need to educate you



1 about certain things you didn't know about.

2 MR. GIUFFRA: I recall this May 13 letter,  
3 but I'm not the one -- I want to get on with the work  
4 of the Committee today and stop the obstruction. No  
5 decision has been made as to when we would issue a  
6 report on this subject, whether we would include it  
7 in the report that was filed on or before --

8 MR. BEN-VENISTE: Let's make the May 13  
9 letter that Mr. Giuffra now remembers Exhibit 3.

10 (Deposition Exhibit 3 identified.)

11 MR. BEN-VENISTE: Let's have these exhibits  
12 attached to the transcript. I haven't made any  
13 suggestion that there has been any improper conduct  
14 between the Office of Independent Counsel and the  
15 majority of this Committee. I made reference to the  
16 fact that they have been ex parte contact and that is  
17 a fact that is publicly known. The fact that --

18 MR. GIUFFRA: If you would let me finish,  
19 you keep interrupting me.

20 MR. BEN-VENISTE: You haven't been saying  
21 anything. Your nose was buried in something else  
22 here.

1 MR. GIUFFRA: Someone handed me a document  
2 I was looking at.

3 MR. BEN-VENISTE: Let me conclude by saying  
4 that it's my view that these kinds of sort of  
5 shoot-from-the-hip suggestions about possibilities  
6 really do not answer the question that Judge Wright  
7 proposed, which was reflected by Mr. Starr in his  
8 letter. Nobody to my knowledge on the basis of what  
9 you have said has asked Mr. Starr whether he would  
10 object to or whether in his view Judge Wright would  
11 prefer that we not go forward on this deposition  
12 until we have some better idea at least about what  
13 would be done with this material.

14 My suggestion is that this be done on a  
15 member level and taken up on Monday between Senator  
16 Sarbanes and Senator D'Amato, because I don't know,  
17 since you were unaware of a lot of this, whether  
18 Senator D'Amato has seen the transcript of Judge  
19 Wright here in --

20 MR. GIUFFRA: Please, of all --

21 MR. BEN-VENISTE: Please don't interrupt  
22 me, or whether he has seen the correspondence that

1 has recently been received from defense counsel on  
2 this matter.

3 MR. GIUFFRA: Majority counsel was aware of  
4 the transcript of the hearing of May 9. Mr. Chertoff  
5 and I discussed that transcript yesterday. I had  
6 forgotten the May 13 letter, which was one of many  
7 letters which cross my desk every day. I recall  
8 seeing it now after having my memory refreshed. I  
9 know that Mr. Chertoff got a copy of this letter.

10 With regard to how we should proceed today,  
11 the decision was made to go forward. The Chairman is  
12 aware of the decision. He is aware of the  
13 circumstances surrounding the decision, and our  
14 instructions are to go forward. We will have a  
15 separate transcript and we will deal with it next  
16 week as to what we will do with that transcript.

17 MR. BEN-VENISTE: My view is --

18 MR. GIUFFRA: Can I finish?

19 MR. BEN-VENISTE: I thought you had. See,  
20 when there are long pauses when you stop talking I  
21 think you have finished.

22 MR. GIUFFRA: With regard to the March 28

1 letter that is referred to in the Independent  
2 Counsel's letter of April 30, Mr. Nappi, who is a  
3 member of the majority counsel staff, handed me a  
4 document he printed off his computer which indicates  
5 that this letter referenced Mr. Lindsey. We can make  
6 it Exhibit 4, and he is now endeavoring to locate the  
7 hard copy of this letter.

8 (Deposition Exhibit 4 identified.)

9 MR. GIUFFRA: I have no reason to believe  
10 that we didn't send the letter.

11 MR. BEN-VENISTE: May I see it?

12 MR. GIUFFRA: Yes.

13 MR. KRAVITZ: The only question I have is  
14 we have searched minority chron files yesterday and  
15 today. We do not have a copy of this letter.

16 MR. GIUFFRA: It's possible the letter  
17 could have been sent out without a copy being made.  
18 It's possible. Could I take a break? We have the  
19 Chairman on the phone.

20 (Recess.)

21 MR. GIUFFRA: I just got off the phone with  
22 Chairman D'Amato. It's 2:00. I called him in

1 New York and I asked him a number of questions.  
2 Number 1, with regard to the three issues that we had  
3 deferred from our discussion earlier, he ruled, and I  
4 will go through a list of the questions, that --

5 MR. BEN-VENISTE: Whoa. There are no  
6 rulings unless we are present. If you have some  
7 instruction, let's do it. Rulings? You present the  
8 issue and he rules without us being present?

9 MR. GIUFFRA: That is the way we have done  
10 it in other depositions.

11 MR. KRAVITZ: None that I have been present  
12 at.

13 MR. BEN-VENISTE: Go ahead.

14 MR. GIUFFRA: He ruled that, number 1, he  
15 directed Mr. Lindsey to answer the question who from  
16 the Lippo group he spoke with after January 20, 1993,  
17 under section 5(B)(7) of Senate Resolution 120, which  
18 provides in part, "If a witness objects to a question  
19 and refuses to answer on the basis of relevance or  
20 privilege, the Special Committee staff may proceed  
21 with the deposition or may at that time or at a  
22 subsequent time seek a ruling on the objection from

1 the Chairman. If the Chairman overrules the  
2 objection, the Chairman may order and direct the  
3 witness to answer the question, but the Special  
4 Committee shall not initiate procedures leading to  
5 civil or criminal enforcement unless the witness  
6 refuses to answer after having been ordered and  
7 directed to answer."

8 Pursuant to that provision, I asked the  
9 Chairman with regard to the objections that were  
10 raised earlier today, and I believe the objections  
11 were raised by minority counsel rather than by  
12 counsel for Mr. Lindsey, and counsel for Mr. Lindsey  
13 just said we will deal with it among the parties and  
14 he did not want to inject himself into it, but I have  
15 spoken to the Chairman D'Amato and his ruling with  
16 regard to, one, the question of whether we could ask  
17 Mr. Lindsey who from the Lippo Group he spoke with  
18 after January 20, 1993. That is the first question.

19 The second question, whether Mr. Lindsey  
20 had discussed with anyone after January -- strike  
21 that -- after Mr. Hubbell left the Department of  
22 Justice, Mr. Hubbell's financial difficulties or

1 arrangements.

2 The third question was whether he discussed  
3 with anyone at the White House Mr. Hubbell's  
4 financial difficulties or arrangements after  
5 Mr. Hubbell left the Department of Justice.

6 The fourth question was whether we could  
7 ask Mr. Lindsey about discussions he had with persons  
8 at the White House or elsewhere with regard to the  
9 employment of Mrs. -- Mr. Hubbell's wife at the  
10 Department of Interior.

11 With regard to all of these questions the  
12 Chairman overruled the objection stated by  
13 Mr. Ben-Veniste and has ordered and directed  
14 Mr. Lindsey to answer those questions.

15 MR. BEN-VENISTE: Did you raise the Perry  
16 County matter?

17 MR. GIUFFRA: Yes, I raised the Perry  
18 County matter, and the Chairman's view was we should  
19 proceed with the deposition. I advised the Chairman  
20 again, just to be doubly sure that he was aware of  
21 the May 13 letter from Ken Starr to himself and  
22 Senator Sarbanes. I advised him of the transcript of

1 the hearing of May 9, 1996.

2 I think it's also important for purposes of  
3 making sure the record is complete that the Court  
4 was, stated on page 74, "My own experience, however,  
5 with respect to jurors we draw, and this particularly  
6 true with jurors outside of central Arkansas, and we  
7 are not going to have that kind of panel, we are  
8 going to have a panel from central Arkansas, that  
9 they don't read those newspapers very much.  
10 Sometimes they say they do, but they really don't,  
11 and oftentimes they won't have a clue." Going down  
12 further Down here, "In our Lour community" -- that's  
13 L-o-u-r --

14 MR. BEN-VENISTE: You don't want to read  
15 the next paragraph into the record?

16 MR. GIUFFRA: That is already part of the  
17 record.

18 MR. BEN-VENISTE: I don't think I read it.  
19 Do you want to read it?

20 MR. GIUFFRA: Not particularly.

21 MR. BEN-VENISTE: Did you read that to  
22 Senator D'Amato, that paragraph?



1 MR. GIUFFRA: I haven't finished my  
2 statement, Mr. Ben-Veniste, and I asked you off the  
3 record if you would extend me the courtesy --  
4 courtesy, something which I think is an important  
5 thing for lawyers to do and something that I guess  
6 you never learned, notwithstanding how old you are,  
7 but to let me finish making my statements and then  
8 you can say whatever you want, although I think at  
9 some point the speeches have to end and the  
10 questioning as to begin.

11 MR. BEN-VENISTE: But did I forget, you  
12 interrupted me to ask you to read things from the  
13 transcript or did I make that up?

14 MR. GIUFFRA: But I think the Judge made  
15 quite clear in her statement that she thought it  
16 would be possible to find jurors in Arkansas that  
17 would not be been infected by whatever publicity  
18 might be surrounding this matter.

19 MR. BEN-VENISTE: That is the portion you  
20 read to Chairman D'Amato and not the portion which  
21 she asked specifically that he not get into this.

22 MR. GIUFFRA: She did not say that.

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1 MR. BEN-VENISTE: She didn't say that?  
2 Well, "You may tell the Senator this Court is  
3 concerned" -- that is at page 75.

4 MR. GIUFFRA: That is true.

5 MR. BEN-VENISTE: That is what you told  
6 Senator D'Amato?

7 MR. GIUFFRA: If you would let me finish,  
8 Richard, I know it's difficult for you to be quiet  
9 for more than two minutes, but the point is she also  
10 said, "As Judge Starr said, Congress has an  
11 independent right to investigate these matters."

12 There is a letter which we can pull out  
13 signed by the person who is your boss, Senator  
14 Sarbanes, indicating Congress has an independent  
15 right to go forward, and we are going forward.

16 Now, I told the Chairman about the  
17 statements by the Judge, told him about the letter,  
18 and the Chairman's view was as follows:

19 Take the deposition today. We would have a  
20 separate transcript and that at least as of now his  
21 view would be we would, if we have a discussion of  
22 the Perry County Bank we would seal that discussion

1 in our report and we would release it after the trial  
2 in order to avoid infecting the trial proceedings,  
3 but he directed me to go forward and he asked me to  
4 communicate that to everyone.

5 MR. BEN-VENISTE: All right. I think what  
6 we need to do is take a recess to see when we can  
7 contact Senator Sarbanes and find out whether he  
8 wishes to take this up with Senator D'Amato, since  
9 Senator D'Amato is obviously available. Then we can  
10 try to reach him.

11 MR. GIUFFRA: Before you do that --

12 MR. BEN-VENISTE: Since it's lunch time.

13 MR. GIUFFRA: Let's go through the  
14 questions we had from the morning and complete that  
15 part of the examination.

16 MR. BEN-VENISTE: Since we need to do this  
17 anyway, it's 2:00 we have been going since 9:30. I  
18 think everyone is ready for lunch.

19 MR. GIUFFRA: When did you start deciding  
20 when we are having lunch? Since I'm the one who is  
21 asking the questions, at this point, Mr. Lindsey,  
22 could, do you want to go through and try to resolve

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1 these issues right now or do you want to take a lunch  
2 break?

3 MR. SNYDER: It is after 2:00. If we are  
4 going to keep going today we have to take lunch at  
5 some point. 2:00 is probably all right.

6 MR. GIUFFRA: Let's take a break until a  
7 2:45.

8 (Recess for lunch was taken from 2:07 to  
9 3:00 p.m.)

10 MR. GIUFFRA: Mr. Ben-Veniste is not with us  
11 now, but Mr. Kravitz informed me he does not object  
12 to our examination on the questions that were  
13 outstanding by which I got a ruling from the  
14 Chairman.

15 MR. SNYDER: I take it this should go on  
16 the first of the two transcripts?

17 MR. GIUFFRA: Yes.

18 THE WITNESS: Can I make a suggestion? I  
19 don't know if it makes sense. The discussion you had  
20 when you came back in which you explained the ruling,  
21 which was earlier, when you came back and you said I  
22 asked him, so that you don't have to repeat it, maybe

1 that should also go in the first transcript.

2 MR. GIUFFRA: I appreciate that. I think  
3 this would be a good idea. If there is a way you can  
4 do it.

5 The sum and substance is we went to the  
6 Chairman about the four questions that were  
7 outstanding from the first transcript and he ruled  
8 that they were in order and directed Mr. Lindsey to  
9 answer the questions. So now I'm going to do that.

10 BY MR. GIUFFRA:

11 Q Question one. After January 20, 1993, who  
12 from the Lippo Group or its affiliates did you speak  
13 to?

14 A I'm not quite sure who, what the affiliates  
15 are. I will tell you who I spoke to related to the  
16 Lippo Group. James Riady, and I believe a guy, well,  
17 a guy named, I think it's John Wong, but I'm not  
18 quite sure, I may be totally wrong on the last name,  
19 so I will apologize to him. He now works at the  
20 Department of Commerce.

21 I told you mostly about my conversation  
22 with James Riady in Indonesia, in which I sort of

1 explained to him why I didn't think it was a good  
2 idea to bring the Arkansans. I have had other  
3 conversations with him, none of substance, when I  
4 have seen him in the White House or seen him at a DNC  
5 fundraiser or something where we exchanged  
6 pleasantries, but no substantive conversation.

7 John Wong, about six months ago or so,  
8 maybe a little longer, indicated an interest in  
9 wanting to work in the government, and he was, and I  
10 had a conversation with him about his interest.  
11 Since then he has joined the administration at the  
12 Department of Commerce.

13 In addition, I met but never, other than  
14 just meeting, and I think it's the only time I ever  
15 met him, James Riady's father. While we were in  
16 Indonesia I was introduced to him.

17 Q Is that Mochtar, M-o-c-h-t-a-r, I believe?

18 A Yes. But other than being introduced to  
19 him and saying "glad to meet you" I had no  
20 substantive conversations with him. And again I will  
21 repeat what I said earlier. None of my conversations  
22 with any of the Riadys had anything to do with any

1 arrangements with respect to Web Hubbell working for  
2 him.

3 The only other people are theoretically, my  
4 law firm represents Riadys on some matters and I have  
5 spoken to people in my law firm. Again most,  
6 exclusively it was, with respect to the Riadys, I  
7 think about the Arkansans going to Indonesia.

8 Q That Mr. Buford?

9 A Mr. Buford.

10 Q Did you speak to anyone else at your law  
11 firm about the Arkansans going to Indonesia?

12 A John Tisdale may have been by conference  
13 call in which both of them were on the phone, but  
14 Doug was sort of the person who I was talking to  
15 about that.

16 Q In any of the conversations that you had  
17 affiliated with the Lippo Group after January 20,  
18 1993, other than the conversation you may have had  
19 with James Riady in Indonesia, in any of the other  
20 conversations, meetings, did Web Hubbell's name come  
21 up in any way?

22 A Just Doug Buford, and I think I testified,

1 I don't think when I spoke to James that Web's name  
2 came up.

3 Q You weren't sure about that.

4 A I wasn't sure, but I don't believe it did.  
5 I think I was just basically trying to explain to him  
6 why I didn't think it was a good idea that this group  
7 of Arkansans show up in Indonesia.

8 Q When you spoke to Mr. Buford, he said  
9 Hubbell was doing some work for the Lippo Group?

10 A I have a sense that I said why is Web's  
11 name on this list, because he was now living up here,  
12 not in Arkansas, was not as directly connected to  
13 Little Rock, and I think he said, I think that is how  
14 I probably learned it, Web is doing some work for  
15 them, for the Lippo Group, or for the Riadys. We  
16 usually referred to it as "the Riadys," not Lippo  
17 Group.

18 Q Do you have any understanding as to whether  
19 Mr. Hubbell contacted anyone in the administration  
20 about this proposed trip to Indonesia?

21 A I do not know that, no, did not contact  
22 me.



1 Q After Mr. Hubbell left the Department of  
2 Justice, did you discuss with anyone at the White  
3 House Mr. Hubbell's financial difficulties or  
4 financial arrangements that he might be entering  
5 into?

6 A The answer to financial discussions, about  
7 the financial arrangements he might be entering into,  
8 the answer to that is no. Except that, well, except  
9 that after the fact at one point an issue came up  
10 about his representation of the Los Angeles airport, .  
11 but we didn't talk about him entering into that  
12 financial arrangement, but at some point a matter  
13 came up about him being involved in that matter.

14 Q What was he doing for the Los Angeles  
15 airport?

16 A He was representing the City of Los Angeles  
17 I believe before the Department of Transportation  
18 with respect to a transfer of airport money from the  
19 airport authority to the city. It's been in the  
20 paper. Do a LEXIS search of the Los Angeles Times.  
21 And basically what I know about it is, at least what  
22 I know about Mr. Hubbell's involvement is reflected

1 in the newspaper articles. That is where I learned  
2 it.

3 Q You don't have any understanding as to  
4 whether he ever contacted anybody at the White House  
5 on behalf of the Los Angeles airport?

6 A I think he has testified or said that he  
7 did not, and again he did not contact me.

8 Q Okay.

9 A The other matter is I learned after the  
10 fact that he has a book contract, but again I read  
11 that in the paper. To the extent that I have  
12 discussed his financial difficulties, the only person  
13 I have, I probably have discussed that with in the  
14 White House is Marsha Scott, who is a personal friend  
15 of his and mine, and I think all we have ever  
16 discussed is that they have, I guess, two or three  
17 kids in college and basically little or no income and  
18 how difficult that is, but we certainly never had any  
19 discussions about anything that could be done about  
20 it, simply sort of commiserated about how tough it is  
21 on them all.

22 Q Did you have discussions with anyone

1 outside the White House about Hubbell's financial  
2 difficulties?

3 A Well, I talked to Susie. Not directly,  
4 but, well, full disclosure, Susie I think has sold  
5 her house, and some of her paintings are now in my  
6 apartment. You know, it was difficult for her. They  
7 were not bought, but just basically on my walls. I  
8 expressed to her my thanks for letting me have her  
9 paintings, and I knew it was difficult to have to  
10 part with them, even on a loan basis.

11 Q Anyone else besides, is that Mrs. Hubbell?

12 A Yes.

13 Q Anyone else besides Mrs. Hubbell?

14 A No. Kaki Hockersmith and I may have  
15 discussed Web's difficulties, again, in a general,  
16 not a specific way.

17 Q You are not aware of any efforts by anybody  
18 affiliated with the administration to try to get any  
19 work to Mr. Hubbell?

20 A No.

21 Q Okay. Now with regard to Mr. Hubbell's  
22 wife and the job at the Department of Interior.

1 A Yes, you want know my involvement?

2 Q Yes.

3 A I believe that on the morning that -- she  
4 took a leave of absence, as I understand it from the  
5 department with the understanding that she had the  
6 right and would return. On the morning that she had  
7 arranged, as I understand it, with them to return,  
8 she showed up for work and was told by someone, I  
9 don't know who, that she couldn't attend like the  
10 morning staff meeting because her coming back had not  
11 been approved, and I believe she was told it had not  
12 been approved by the White House.

13 She then went into an office and I think  
14 tried to call two or three people in the White  
15 House. One of the people she tried to contact and  
16 talk to was me. She says that she was told to show  
17 up on that day, that she came to work, that they had  
18 this senior staff meeting or whatever it was and she  
19 was asked to leave the meeting and told that she was  
20 being asked to leave the meeting because her coming  
21 back hadn't been approved by the White House.

22 Q When was this?

1 A Whatever the date was she came back to  
2 work. Was it February or March, February, maybe.  
3 I'm guessing.

4 Q Is this of '95?

5 A I guess, yes. That I said I would find out  
6 what the problem was. I went downstairs. By the  
7 time I got downstairs, I think I asked maybe Erskin  
8 Bowles, it had already been taken care of, because  
9 before I had gotten back to her she had talked to  
10 someone else, I'm not sure who. They had raised it  
11 and when I went down there I was told it's been  
12 resolved, and that was the extent of my involvement.

13 Q Did you have conversations with anybody at  
14 the White House, anyone else besides Mr. Bowles about  
15 Mrs. Hubbell and this job at the Interior Department?

16 A No. I was questioned by the FBI about it  
17 after the fact, when it came out.

18 Q Other than the FBI.

19 A No. There may have been a House Committee,  
20 there may have been a House Committee that also sent  
21 me questions on it.

22 MR. SNYDER: There was.

1 MR. GIUFFRA: Why don't we stop here. I'm  
2 done here.

3 (Discussion off the record.)

4 MR. KRAVITZ: Why don't we wait a couple  
5 minutes. He is supposed to be back at 3:15.

6 (Recess from 3:15 to 3:51 p.m.)

7 MR. GIUFFRA: We have discussed various  
8 matters. It's now about 8 minutes to 4. We  
9 discussed various matters with the Chairman. I  
10 gather the minority has spoken with Senator Sarbanes.  
11 The Chairman's ruling with regard to how to handle  
12 this is as follows: We take the deposition of  
13 Mr. Lindsey today with regard to Perry County Bank  
14 matters. The deposition will be put in a safe of the  
15 Committee under the lock and key of the chief clerk,  
16 and to the extent that the transcript is made  
17 available, it will be done so publicly. It will be  
18 done so after the trial is over and no one will look  
19 at the transcript until -- that is one point I'm a  
20 little bit less clear on, but we are going to put it  
21 under the lock, the safe, and --

22 MR. BEN-VENISTE: Where everybody can look

1 at it.

2 MR. GIUFFRA: No, put it in the safe, and  
3 the Chairman, with regard to this question of whether  
4 the transcript is going to be printed, I tried to get  
5 the Chairman -- apparently Senator Sarbanes would  
6 like the transcript not to be printed up.  
7 Mr. Chertoff indicated to me he did not personally  
8 agree with that proposal, that he thought we should  
9 have the printed-up transcript.

10 We couldn't get the Chairman on the  
11 telephone. We are going to start the deposition, and  
12 when time for a break comes we will try to get the  
13 Chairman on the telephone and see what the preference  
14 is, but the majority is certainly not waiving its  
15 right to have the transcript prepared.

16 This is a subject matter clearly called for  
17 within the scope of the Resolution, and the proposal  
18 of the Chairman as put forth is clearly a way to  
19 protect the fair trial rights of the defendants down  
20 in Arkansas.

21 I would also note for the record that  
22 during the break I asked the Chairman with regard to

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1 the conversation that Mr. Lindsey testified to that  
2 occurred in late 1993 between the President, Bernard  
3 Nussbaum, then Counsel to the President, Mr. Lindsey  
4 and Mr. Kendall, and the Chairman was, the Chairman  
5 authorized me to advise Mr. Lindsey that he was  
6 overruling any objection to questioning about that  
7 conversation on ground of attorney-client privilege,  
8 and for the reasons stated in our, his ruling with  
9 regard to the Kennedy notes, we do not believe that  
10 attorney-client privilege would attach to a  
11 communication involving Mr. Kendall, Mr. Nussbaum and  
12 Mr. Lindsey and the President, and he was authorizing  
13 me to direct Mr. Lindsey to answer questions about  
14 that meeting in late 1993. So if we could start --

15 MR. BEN-VENISTE: Have you finished  
16 speaking?

17 MR. GIUFFRA: I'm done.

18 MR. BEN-VENISTE: Let me set forth my  
19 understanding of the terms which were proposed by  
20 Chairman D'Amato. Number 1, the chief clerk will  
21 place the transcript in his locked safe immediately  
22 upon receiving it from the court reporter. No copies



1 of the transcript will be made. Two --

2 MR. GIUFFRA: That is fine.

3 MR. BEN-VENISTE: The transcript will  
4 remain in the chief clerk's locked safe and will not  
5 be released until after the completion of the United  
6 States versus Branscom and Hill. That would mean the  
7 verdict, if at all.

8 Three, the deposition will not be referred  
9 to or used in any way in the Special Committee's  
10 final report.

11 Four, the deposition will not be commented  
12 upon by any member or staff of the special Committee  
13 until after the completion of the trial in the United  
14 States versus Branscom and Hill. Now, in addition to  
15 those points, Senator Sarbanes has put forward the  
16 proposition that to further safeguard the security of  
17 the deposition two things should occur:

18 One, that the transcript should not be  
19 transcribed; that is, the notes of our stenograph  
20 reporter should not be transcribed until after the  
21 Hill and Branscom trial is completed, since no use  
22 will be made of that transcript by the Chairman's

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1 proposal prior to that time.

2 And secondly, any notes of counsel should  
3 be safeguarded by locking them in the chief clerk's  
4 safe until such time as the Branscom and Hill trial  
5 is concluded. Now, we tried to reach Chairman  
6 D'Amato, but his phone was busy. I would propose to  
7 try to reach him again while we go on with the  
8 deposition, but I think we can agree that until such  
9 time as Chairman D'Amato and Senator Sarbanes, if  
10 necessary, have the opportunity to discuss this  
11 further, that two steps be taken:

12 Number 1, that the stenograph reporter be  
13 instructed not to type up the notes until further  
14 notice, which would come I think Monday or Tuesday,  
15 but I presume there is no immediate need for a  
16 transcript under the rules, procedures that Senator  
17 D'Amato has proposed.

18 And secondly, and this would be on a  
19 voluntary basis as a demonstration of good faith,  
20 that Mr. Giuffra and Mr. Nappi deposit their notes in  
21 the safe at the earliest possible opportunity pending  
22 the Resolution of this issue by Senator D'Amato and

1 Senator Sarbanes.

2 MR. SNYDER: Let me just make a brief  
3 statement on this issue. I just want to make clear  
4 for the record that Mr. Lindsey has not objected  
5 himself to testifying on this subject. He has  
6 voluntarily in the past given interviews to the  
7 Independent Counsel on these subjects and has  
8 testified before the grand jury and has no problem  
9 personally answering questions on these issues. The  
10 Resolution of the questions that the minority and the  
11 majority have been debating today really are  
12 questions relating to how best to ensure a fair trial  
13 for other people. Issues of the Independent  
14 Counsel's view on that, issues of the Judge's  
15 position on that, are issues for the Senate to take  
16 up with other people. So we will abide by whatever  
17 approach is worked out on that.

18 On the other issue that you mentioned a  
19 moment ago, Mr. Giuffra, with regard to the meeting  
20 in late 1993, I believe, between the President and  
21 Mr. Kendall, that was attended also by Mr. Nussbaum  
22 and Mr. Lindsey, we were not aware that that meeting

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1 was going to be an issue today. There actually has  
2 been testimony before by Mr. Lindsey and possibly  
3 others about that meeting, I think as long as six  
4 months to maybe as much as a year ago. And my  
5 understanding had been that the Committee had viewed  
6 that as something that they were not going to pursue  
7 because of the attorney-client privilege issue.

8 When I first learned that that was a  
9 concern, about 45 minutes ago, we tried during the  
10 recess to reach Counsel to the President and have not  
11 yet been able to reach them. It is, any privilege  
12 that attaches to a meeting between the President and  
13 White House Counsel and the President and his  
14 personal counsel is a privilege that does not belong  
15 to Mr. Lindsey, even though he attended the meeting  
16 also as counsel, and so we are not in a position to  
17 waive that privilege or respond to those questions  
18 until those issues are resolved.

19 I'm not aware whether White House Counsel  
20 or Mr. Kendall even knows that this issue has come  
21 up, so we are attempting to reach them and need to be  
22 again guided by others who can speak to the issue of

1 privilege. So I would urge that you defer asking  
2 those questions until you can resolve those issues  
3 with either Mr. Kendall or Ms. Sherburne or  
4 Mr. Quinn, but we are not in a position to waive any  
5 privilege of the President.

6 MR. GIUFFRA: With regard to the second of  
7 those points, I will defer examination on the  
8 question of the late 1993 conversations between  
9 Mr. Nussbaum, Mr. Kendall, Mr. Lindsey and the  
10 President and Mrs. Clinton until you have a chance to  
11 consult with counsel for the President. I would just  
12 note that issue was raised at the January 10, 1995  
13 deposition.

14 With regard to the second outstanding  
15 issue, as Mr. Ben-Veniste has indicated the majority  
16 position is that we are going to go forward with the  
17 deposition on the Perry County Bank issue. We will  
18 do what the Chairman instructed, which is we will put  
19 the transcript in the safe. Obviously I will try  
20 during the course of this deposition to get hold of  
21 the Chairman, but we are not going to make whether  
22 the transcript gets typed up conditioned upon the

1 minority's consent. There is nothing in the  
2 Resolution that gives the minority a veto over  
3 whether we get a transcript prepared, and with regard  
4 to the handling of people's notes of the deposition,  
5 to the extent I have any notes I have no problem with  
6 putting them in a secure place, and I would expect, I  
7 know that Mr. Ben-Veniste did not indicate what  
8 treatment should be given to Mr. Kravitz's notes, but  
9 those notes should be treated in exactly the same way  
10 as the majority's notes.

11 MR. BEN-VENISTE: We are prepared to do  
12 that, but as a practical matter, in terms of the  
13 transcription of the notes, what would be your normal  
14 turn around?

15 (Discussion off the record.)

16 MR. BEN-VENISTE: The court reporter has  
17 indicated that right now the notes would be  
18 transcribed and delivered midday on Monday. Why  
19 don't we agree, since there is no need for anyone to  
20 look at the notes, since the agreement calls for no  
21 one to do so until Wednesday, unless there is a  
22 further instruction. This would allow Senator

1 D'Amato and Senator Sarbanes to confer or to take up  
2 this further point. Do you have an objection to  
3 that?

4 MR. GIUFFRA: My instructions are to  
5 commence with the deposition. We can try to get  
6 Chairman D'Amato before the day is concluded.

7 MR. BEN-VENISTE: Do you see some logical  
8 reason why the notes need to be transcribed before  
9 Wednesday?

10 MR. GIUFFRA: I think what we will do is we  
11 will contact the court reporter on Monday morning and  
12 we will give her direction as to whether to  
13 transcribe the notes, but I'm certainly not agreeing  
14 that the minority has any veto at all over whether  
15 these notes get typed up or not.

16 MR. BEN-VENISTE: I didn't say whether we  
17 had a veto. I said do you have any logical basis on  
18 which to suggest that the notes should be transcribed  
19 prior to Wednesday?

20 MR. GIUFFRA: I'm not agreeing to  
21 Wednesday. I will agree to not making a decision  
22 until Monday.

1 MR. BEN-VENISTE: There is no logical basis  
2 that has been put forth.

3 MR. GIUFFRA: That is not true, Richard.  
4 The logical basis is it's now 5 after 4. We have  
5 been discussing this issue since 1:00 and you have  
6 done everything in your power to prevent us from  
7 getting to the subject matter.

8 MR. BEN-VENISTE: That is a flat out lie.  
9 The procedure that has been put forward by the  
10 Chairman is a substantial modification to that which  
11 you proposed when you started this, and I think that  
12 is a concrete and positive step toward addressing  
13 Judge Wright's concerns, and I don't need your  
14 commentary about the interim time wherein both  
15 Senator D'Amato and Senator Sarbanes were contacted.

16 If you think Senator Sarbanes' comments and  
17 proposal is a waste of time and is an obstruction of  
18 what you were doing here, I'm pleased to have this  
19 record so reflect and you will deal with the  
20 consequences of that.

21 MR. GIUFFRA: Once again engaging in unfair  
22 comments on the record. All I said was that I was



1 not agreeing to Wednesday. We were going to try to  
2 get the Chairman so that the Chairman could make a  
3 ruling as to whether he would be willing to go until  
4 Wednesday. I'm not authorized to make any agreement  
5 beyond, other than just to start the deposition. I  
6 was told by the Chairman to start the deposition and  
7 I know the Chairman is somewhat frustrated by the  
8 fact that this has gone on for all these hours.

9 We started this morning. We agreed to have  
10 separate transcripts. We agreed to put them in a  
11 safe, and we have spent all this time dealing with  
12 lawyers talking and people trying to make a record.  
13 I suggest we start the deposition.

14 We will try to get the Chairman on the  
15 telephone, see what he wants to agree to. If the  
16 Chairman agrees to Wednesday, it's fine with me. I  
17 just don't want to agree to anything that I'm not  
18 authorized to agree to.

19 MR. BEN-VENISTE: I think the record is  
20 complete and this portion of the record should be  
21 transcribed, so that Senator Sarbanes can see it.

22 MR. GIUFFRA: No, I'm not going to agree to

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1 that. We will, we are -- we will transcribe the  
2 parts of the transcript that, containing all of your  
3 self-serving speeches that I have not bothered to  
4 address because I don't want to keep us here all day  
5 responding to them, so that you can engage in some  
6 sort of gain --

7 MR. BEN-VENISTE: Another sign of intellect  
8 and strength.

9 MR. GIUFFRA: We should have had the  
10 reporter outside --

11 MR. BEN-VENISTE: Go ahead and start your  
12 questions.

13 (Discussion off the record.)

14 MR. GIUFFRA: I fully appreciate that  
15 Senator Sarbanes has every right to communicate with  
16 the Chairman. We have tried to conduct this  
17 investigation in a bipartisan manner, and all I want  
18 to do is make sure that the --

19 MR. KRAVITZ: What was that?

20 MR. GIUFFRA: More snide comments. All I  
21 want to do is not give up any rights the majority  
22 has. I'm not aware of anything in the Resolution

1 that gives the minority a veto over printing up a  
2 transcript. What I'm proposing to do is at some  
3 point this afternoon we will have a break, we can  
4 call the Chairman. If the Chairman wants to put off  
5 having the transcript transcribed until Wednesday,  
6 fine with me, but I think we need to speak to the  
7 Chairman. I don't have authority to make an  
8 agreement along those lines, particularly when the  
9 Chairman has directed me to get the deposition  
10 underway, and we should stop all the delays.

11 I also would like for anything -- while we  
12 are on the record, I don't think Senator Sarbanes has  
13 any intention of obstructing any portion of this  
14 investigation. My comments were directed solely at  
15 Mr. Ben-Veniste, whose conduct today has just been  
16 obstruction, obstruction, obstruction.

17 MR. BEN-VENISTE: All right. Your  
18 observations are noted. They carry the same weight  
19 as always. Let's get started.

20 (Discussion off the record.)

21 MR. SNYDER: That interruption was because  
22 I did just hear back from Mr. Kendall, whom I have

1 been trying to reach. He indicated that he had  
2 understood that that meeting not only was privileged  
3 but he had not understood that any issue had ever,  
4 was under review or consideration on it. He  
5 suggested that if the Committee wishes to pursue  
6 that, they should communicate with him directly. If  
7 there is an issue about a possible agreement that can  
8 be reached in terms of non-waiver it should be  
9 discussed with him. It has not been raised before,  
10 and at the present time I'm not authorized to,  
11 Mr. Lindsey is not authorized to answer questions  
12 from that meeting. It is a privileged meeting, as  
13 Mr. Kendall understands it. If you wish to pursue  
14 that, I suggest you discuss it with him.

15 MR. GIUFFRA: That is fine. Let's just go  
16 off the record a minute. Keep this on the record.  
17 I'm prepared to go forward with the deposition into  
18 the evening. I gather you are leaving the city,  
19 Washington tomorrow.

20 THE WITNESS: Yes.

21 MR. GIUFFRA: What time?

22 THE WITNESS: 8:00 in the morning.

1 MR. GIUFFRA: And you will be back when?

2 THE WITNESS: Tuesday evening. Tuesday  
3 11:30, 12:00.

4 MR. GIUFFRA: In the evening?

5 THE WITNESS: Yes.

6 MR. GIUFFRA: So you would not be available  
7 to start this up until Wednesday?

8 MR. SNYDER: I'm leaving the city Wednesday  
9 late in the day until Friday.

10 MR. GIUFFRA: So it would appear we have to  
11 try to go into the evening to some point tonight to  
12 try to conclude.

13 MR. SNYDER: I agree we ought to conclude.  
14 I don't think we necessarily have to go into the  
15 evening. I suggest we move forward expeditiously.

16 MR. GIUFFRA: I don't want to have a  
17 problem that in 50 minutes they have to leave.

18 MR. KRAVITZ: Well, I don't suggest that  
19 this is -- I'm now being informed of that problem for  
20 the first time. I told you I'm leaving at 5:45, and  
21 I'm not available -- excuse me.

22 MR. BEN-VENISTE: We will see who we can

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1 find, somebody else to cover the rest of the  
2 deposition. We would encourage you to try to shorten  
3 your questions.

4 EXAMINATION (Continued)

5 BY MR. GIUFFRA:

6 Q We were discussing your role, before we had  
7 this three-hour interlude, with regard to the 1990  
8 campaign, and you testified that you had served as an  
9 advisor as well as treasurer with the campaign?

10 A Correct.

11 Q As an advisor to the campaign, did you  
12 attend meetings of the campaign staff?

13 A I attended meetings that the campaign staff  
14 attended, I did not attend campaign staff meetings.

15 Q Did you attend meetings with the Governor  
16 and the campaign manager, other senior officials in  
17 the campaign?

18 A Yes.

19 Q Now, do you know a man named Neal Ainley,  
20 A-i-n-l-e-y?

21 A Yes.

22 Q What can you tell me about him?

1 A When I knew him he was president of the  
2 Perry County Bank.

3 Q When did you first, how did you first meet  
4 Mr. Ainley?

5 A Through the '90 campaign, through our  
6 banking relationship with respect to the '90  
7 campaign.

8 Q Who directed you -- strike that.

9 What was the nature of the banking  
10 relationship that the campaign had with Mr. Ainley?

11 A We didn't have a banking relationship with  
12 Mr. Ainley. We had a banking relationship with Perry  
13 County Bank, in which they were the depository for  
14 the campaign contributions.

15 Q Had the Perry County Bank previously been  
16 the depository for the campaign funds in  
17 Mr. Clinton's gubernatorial campaign?

18 A No.

19 Q And your only contact with Mr. Ainley up to  
20 that point was just meeting him in the course of  
21 establishing this depository relationship?

22 A I don't believe I met him in the course of

1 establishing the depository relationship. I met him  
2 at some point in the course of the representation,  
3 the relationship.

4 Q Do you know a man named Herbie Branscom?

5 A Yes.

6 Q Who is Herbie Branscom?

7 A Herbie Branscom is a Perryville, Arkansas  
8 attorney. He was the Chairman of the Democratic,  
9 Arkansas Democratic party for a while. He also is an  
10 owner of the Perry County Bank.

11 Q And prior to the 1990 gubernatorial  
12 campaign did you know Mr. Branscom?

13 A Yes.

14 Q Had he previously been involved in  
15 fundraising activities for Governor Clinton?

16 A I assume, but I wasn't that involved with  
17 fundraising activities for the governor. He was  
18 involved in the Clinton campaigns.

19 Q Did you ever work with him on any Clinton  
20 campaigns?

21 A No, I don't believe so.

22 Q Did he hold any position on any state



1 commissions as of the start of the 1990 gubernatorial  
2 campaign?

3 A I believe he may have been on the Arkansas  
4 State University Board. I believe that is correct.  
5 He had also at some point maybe have been a member of  
6 the Claims Commission in Arkansas at some time. I'm  
7 not quite sure about that. He had had various  
8 appointments, state government appointments.

9 Q Do you know a Mr. Robert Hill?

10 A Yes.

11 Q Who is Robert Hill?

12 A Robert Hill is a resident of Perryville  
13 Arkansas. He is a CPA, I believe.

14 Q Does he have any role with regard to the  
15 Perry County Bank? Did he have any role?

16 A I'm not sure during this period that I was  
17 aware of it, but yes, he was apparently an owner or  
18 part owner.

19 Q Did Mr. Hill have any role during the 1990  
20 campaign?

21 A Not directly, no.

22 Q Did he have an indirect role?

1 A Well, when you get to it he raised some  
2 funds and gave them to the Governor, but he was not  
3 as far as I know any formal member of any sort of  
4 fundraising committee.

5 Q Was Mr. Branscom a member of any formal  
6 fundraising committee for the campaign?

7 A I don't know the answer to that.

8 Q Did he have -- strike that.

9 What about Mr. Kent Dollar, did you know  
10 Mr. Kent Dollar prior to the 1990 gubernatorial  
11 campaign?

12 A Neither prior nor subsequent to.

13 Q Have you ever met Mr. Dollar?

14 A Not that I'm aware of. I have been told he  
15 is from Russellville, Arkansas, but I don't know  
16 that. I don't know anything about him.

17 Q Do you have any knowledge of what role he  
18 may have played with the 1990 campaign?

19 A No.

20 Q Do you have any understanding as to then-  
21 Governor Clinton's relationship with Mr. Branscom?

22 A Herbie Branscom was one, when Bill Clinton

1 first started running for office in 1974 in what was  
2 the Third Congressional District, which is northwest  
3 Arkansas, Perry County at that point was a part of  
4 the Third Congressional District, and my  
5 understanding is that Herbie Branscom was his county  
6 chairman in Perry County and that Herbie was a  
7 supporter of his in every election from that point  
8 forward.

9 Q Do you have any understanding as to what  
10 Mr. Hill's relationship was to Governor Clinton as of  
11 the time of the 1990 gubernatorial campaign?

12 A Did I have any knowledge as of the time or  
13 do I have any knowledge now as to what it was as of  
14 the time?

15 Q Why don't you give us your answer as of the  
16 time, first.

17 A No, I did not know at the time. I don't  
18 know what role or involvement he had.

19 Q How about now?

20 A I now know that he at some point prior to  
21 1990 had been appointed to the Banking Commission.

22 Q Was Mr. Hill, was he up for reappointment

1 to the Banking Commission in 1990?

2 A I don't think, I don't believe so.

3 Q Do you know when his term ran?

4 A I believe '91, I believe, but I didn't know  
5 that at the time.

6 Q Now, did you have a day-to-day role in the  
7 '90 campaign?

8 A No.

9 Q You were still a lawyer at that point at  
10 the Wright Lindsey firm?

11 A I'm still a lawyer today, but yes, I was  
12 still a lawyer at the Wright, Lindsey, Jennings firm  
13 on a day-to-day basis.

14 Q Did you have a greater role in the 1990  
15 campaign than in prior campaigns of the Governor?

16 A Yes, I had never been involved in a prior  
17 campaign of the Governor's.

18 Q Why did you have a greater role or have a  
19 role in this campaign than in the previous campaigns?

20 A Well, good question. In previous elections  
21 I had been involved in other people's campaigns at  
22 the same time. My main connection in Arkansas is

1 with Senator David Pryor, and I know in 1984, maybe,  
2 or '86, one of the previous elections when Governor  
3 Clinton was up for reelection, I was involved in  
4 David Pryor's campaign. I was asked to be treasurer,  
5 and so I guess that is why I had a larger role, had a  
6 role at all in this campaign.

7 Q Who asked you to become the treasurer?

8 A I don't really know. Either the Governor  
9 or Gloria Cabe. I just don't remember.

10 Q Gloria Cabe is the campaign manager?

11 A Yes.

12 Q Did you report to Gloria Cabe or did you  
13 report to the Governor?

14 A I didn't report to anybody. I didn't have  
15 any sort of reporting needs. I talked to Gloria Cabe  
16 on a regular basis. I talked to the Governor on an  
17 irregular basis, mostly when I was invited to attend  
18 some meeting that he was involved in, mostly  
19 strategy, but I didn't see it as a reporting  
20 relationship.

21 Q Since January 1, 1992, have you had any  
22 discussions with Gloria Cabe about the 1990 Clinton

1 gubernatorial campaign?

2 A Not substantive, I don't believe.

3 Q When you say not substantive, what do you  
4 mean by that?

5 A Well, I think she knows -- I see her very  
6 irregularly, but I think she knows what I have gone  
7 through for the last two years and we probably have  
8 talked about it in personal terms, about isn't it a  
9 shame, how are you holding up, those sorts of  
10 comments, but we have never had, I have never had a  
11 substantive conversation with her about the campaign.

12 Q What happened during the course of the  
13 campaign?

14 A What do you mean?

15 Q Have you discussed with Ms. Cabe since  
16 January 1, 1992 any matters relating to the role of  
17 the Perry County Bank in the '90 campaign?

18 A I don't believe so.

19 Q Have you discussed with anyone who is  
20 counsel to Ms. Cabe any matter relating to the role  
21 of the Perry County Bank in the 1990 campaign since  
22 January 1, 1992?

1 A No.

2 Q Are you aware of this Committee's subpoena  
3 to Ms. Cabe?

4 A No.

5 Q What was Betsey Wright's role in the 1990  
6 gubernatorial campaign?

7 A She didn't have one.

8 Q Do you know why that was, given that she  
9 had been campaign manager in prior campaigns?

10 A I think she was Chairman of the party at  
11 this time. She had left the Governor's office  
12 sometime, I believe in maybe early or late '89, just  
13 I think basically worn out. She did some consulting  
14 for various campaigns, not ours, but others, during  
15 the '90 campaign and at some point she became  
16 Chairman of the party, but I'm not quite sure when  
17 that was, but I think she was just physically worn  
18 out from 10 years of being Chief of Staff to the  
19 Governor.

20 Q What was Bob Nash's role in the '90  
21 campaign?

22 A He didn't have one. He worked for the

1 Governor. He probably had, I don't know what he was,  
2 probably head of the Arkansas Development Finance  
3 Authority, perhaps, and was obviously a supporter,  
4 and we may have used him in the Black community at  
5 times to be a speaker, but he, other than that, I  
6 don't know if he had a role.

7 MR. BEN-VENISTE: Excuse me, I just spoke  
8 to Senator Sarbanes again, and on his direction, let  
9 me advise our stenographic reporter that he has asked  
10 me to instruct you on his behalf not to transcribe  
11 these notes until he has had an opportunity to talk  
12 with Senator D'Amato, and that surely will be  
13 accomplished by Tuesday, so not to transcribe these  
14 notes prior to that.

15 MR. GIUFFRA: That is fine. We don't have  
16 a problem with that. Just so we have this on the  
17 record, is minority staff going to make efforts to  
18 get someone to cover the rest of the deposition?

19 MR. SNYDER: We would appreciate any  
20 efforts you can make to get us out of here at a  
21 reasonable hour, since we started at 9:30.

22 MR. GIUFFRA: I'm trying to, I apologize.



1 There have been a lot of unfortunate interruptions.

2 BY MR. GIUFFRA:

3 Q Who are the senior members of the campaign  
4 finance staff in the 1990 gubernatorial campaign?

5 A I don't know if I know the answer to that.  
6 The finance director was a banker. I'm drawing a  
7 planning on his name, but who he had working for him  
8 or with him, I just don't know. He is from Hot  
9 Springs. He is a banker. It may be either -- if you  
10 could help me with the name or I might be able to  
11 figure it out later.

12 Q Would you please. Were there any members  
13 of the campaign staff who were involved in  
14 fundraising activities?

15 A He was a member of the campaign staff. He  
16 was a paid person.

17 Q This person in Hot Springs?

18 A Yes, used to be from Dumas, moved to Hot  
19 Springs, came from Pine Bluff before that. I can  
20 give you his history, I just can't tell you his  
21 name. He was a paid member of the campaign staff. I  
22 don't believe there were other, any other

1 fundraisers, if that is the right word, on the  
2 campaign staff. I was not a fundraiser. Make that  
3 clear.

4 Q You were not involved in any fundraising  
5 activities during the campaign?

6 A I didn't go out and raise funds. I may  
7 have attended a fundraiser.

8 Q Did you help plan any fundraisers?

9 A I don't think so.

10 Q Did you solicit anyone for contributions?

11 A I doubt it, unless it was my law partners.  
12 I'm not good at that.

13 Q What is your understanding of how it came  
14 to pass that the Perry County Bank would play the  
15 role of depository institution for the 1990 Clinton  
16 gubernatorial campaign?

17 A In the past the Bank of Cherry Valley had  
18 been primarily the bank that had been used. I  
19 believe there was a preference to use a non-Little  
20 Rock bank, for several reasons. One, we had three at  
21 various times, three or four, then two Little Rock  
22 banks, and if you picked one of them over the other

1 you created political problems, not serious political  
2 problems, but you would have, the one bank would be  
3 upset that you hadn't picked them and so forth. At  
4 this point, at one point Maurice Smith, who is a  
5 close friend and friend of the President owned the  
6 Bank of Cherry Valley. I don't believe he has an  
7 interest in the Bank of Cherry Valley any more.

8 I think there was probably an interest in  
9 putting the deposits at some bank that was owned by a  
10 supporter, and I don't know quite who picked or how  
11 the Perry County Bank got picked, but that was sort  
12 of the process.

13 Q Do you have any other understanding as to  
14 why the Bank of Perry County was chosen?

15 A No, I think that is basically my  
16 understanding.

17 Q Which is that Maurice Smith had some role  
18 in directing the campaign?

19 A No, no. In previous campaigns we had  
20 placed our bank account at the Bank of Cherry  
21 Valley.

22 Q Which was run by Mr. Smith?

1 A Right. Mr. Smith no longer had an interest  
2 in the Bank of Cherry Valley, so I don't believe, so  
3 I don't think there was any interest. They were  
4 looking for another bank or considering other banks.  
5 I think clearly they wanted the money to be at a bank  
6 of a supporter. I don't know how, of the various  
7 banks that may be owned in the state of Arkansas by  
8 people who are supporters of the President, Perry  
9 County Bank was selected. I don't believe I was  
10 involved. Someone may have asked me if that was okay  
11 and I said sure, sounds fine with me, but I don't  
12 think, I'm pretty clear I didn't think of it.

13 Q Did you discuss the decision to use the  
14 Perry County Bank as a depository institution for the  
15 '90 campaign with anyone?

16 A I'm sure Gloria Cabe and I had a discussion  
17 about it. Again I don't recall the discussion, but  
18 either she would have said we are going to use it and  
19 I said that is fine or she said what do you think  
20 about using it. Again I can't tell you what the  
21 discussion was, but I assume she and I talked about  
22 it.

1 Q Did you discuss with Governor Clinton the  
2 decision to use the Perry County Bank in the '90  
3 campaign?

4 A Again, I don't remember a discussion with  
5 him. I assume somebody would have told him before we  
6 did it or at the time we did it that we were doing  
7 it.

8 Q Did you discuss with Mr. Branscom the  
9 decision to use the Perry County Bank in the '90  
10 campaign before you started the relationship?

11 A I didn't.

12 Q Do you know whether Ms. Cabe did?

13 A I assume she did, but I have no personal  
14 knowledge of it. I assume you would have to talk  
15 with them about it.

16 Q Do you have any understanding as to whether  
17 the Governor and Mr. Branscom spoke prior to the  
18 start of the relationship between the campaign and  
19 the Perry County Bank?

20 A Spoke about the matter of the Perry County  
21 Bank, no, I have no knowledge of that.

22 Q Have you ever discussed the subject of the

1 origin of the relationship between the campaign and  
2 the Perry County Bank with President Clinton?

3 A No.

4 (Discussion off the record.)

5 BY MR. GIUFFRA:

6 Q So it's your testimony you really don't  
7 have any understanding as to why the Clinton campaign  
8 went to the Perry County Bank in the '90 campaign?

9 A Well, I understand the rationale as to why  
10 we went to an outside of Little Rock bank owned by a  
11 supporter. I don't remember having a discussion  
12 about multiple banks and saying which of these four  
13 banks would you like. I don't remember any  
14 discussion like that. I have a sense that someone  
15 said, "What about the Perry County Bank." I probably  
16 said, "Sounds good to me."

17 Q What was the distance between where the  
18 Perry County Bank was located and Little Rock?

19 A Probable 45 minutes, 45 miles, maybe an  
20 hour.

21 Q As of 1990, had Arkansas enacted inter-  
22 county branching legislation?

1 A You have had more discussions about that  
2 than I have. I don't remember when. I think it was  
3 before that. It was during, while Bill Clinton was  
4 renewing one of his loans up in Citizens Bank of  
5 Flippin they signed the bill, owned by Twin City  
6 Bancshares, according to you all.

7 Q You don't know. Did the Perry County Bank  
8 have a branch office in Little Rock?

9 A No.

10 Q Do you know whether there were any banks  
11 that were primarily located outside of Little Rock  
12 that had branches in Little Rock?

13 A No. I think I know there were none, unless  
14 they were owned by holding companies. There could be  
15 outside of Little Rock banks owned by the same  
16 holding company that had Little Rock banks.

17 Q So if Twin Cities had a branch in the TCBY  
18 building as of 1990 --

19 A North Little Rock Bank, that would be the  
20 same county, but, yes.

21 Q You mentioned that the two factors were it  
22 had to be a bank that was located outside of Little

1 Rock?

2 A Incidentally, TCBY does not stand for Twin  
3 Cities Bank, it stands for The Country's Best Yogurt,  
4 but just because Twin Cities is "TCB," I just want  
5 to, if you were under the misimpression that TCB was  
6 Twin Cities Bank, I wanted to correct that.

7 Q I have actually seen it.

8 MR. KRAVITZ: We have also been on the New  
9 Jersey Turnpike and seen it there.

10 BY MR. GIUFFRA:

11 Q So one factor for using a bank was that it  
12 was outside of Pulaski County?

13 A Right. Outside of Little Rock, yes.

14 Q Outside the city of Little Rock?

15 A We probably would have felt the same way  
16 about North Little Rock.

17 Q Do you recall discussions about the fact  
18 you needed to get a bank outside of Little Rock or  
19 are you speculating?

20 A No, I believe I knew that the reason why we  
21 had always done banking in non-Little Rock-related  
22 banks was because you didn't want to get into a fight



1 between various Little Rock banks. The politics of  
2 banks in Little Rock is worse even perhaps than the  
3 politics of politics, so I think I knew that. I  
4 think I knew that from relationships with, going back  
5 to Cherry Valley and other banks. Again I don't  
6 remember a discussion about it. I just think I knew  
7 it. So I assume at some point I had a discussion  
8 about it.

9 Q And the second criteria mentioned would be  
10 that the bank needed to be owned by a supporter of  
11 Governor Clinton?

12 A Sure.

13 Q Why was that an important criteria?

14 A Well, it's clear that they know a lot about  
15 how much money you raised, things like that, and you  
16 don't want that sort of information in the hands of  
17 people who are not supportive. If you are having  
18 good fundraising, you have various reports that you  
19 file that, frankly, until those reports are filed you  
20 don't have much interest in having everybody sort of  
21 know how your fundraising is going.

22 MR. COLE: The question was, I take it, the

1 reports lag the actual receipt of funds in the  
2 fundraising events, so there would be a lag time  
3 before there are the reports.

4 THE WITNESS absolutely. The first report  
5 was 20 days out, as of -- maybe 30 days out, if I  
6 remember right. So until that report, there is no  
7 public report of the fundraising, and then there is a  
8 10-day report and then there is a post-election  
9 report. So there are three reports, but they all lag  
10 the actual receipt of the money. There is not any  
11 sort of monthly reporting or instantaneous  
12 reporting. There may be monthly reporting now or in  
13 some years, more like the FEC, but that wasn't the  
14 case in 1990.

15 BY MR. GIUFFRA:

16 Q Would the campaign be more -- why would a  
17 campaign be concerned about the fact they had raised  
18 a substantial amount of money, having that be  
19 disclosed?

20 A That is a strong indication of the support  
21 a candidate has, is the amount of money he raises.  
22 One of the ways you judge people even when you see

1 the reports is that if a candidate has raised -- Bob,  
2 you sat up here, you watched, if every time there is  
3 a national race and Bob Dole and all the Republicans  
4 put out the report of how much money they raise, that  
5 is an indication of the kind of support they have.

6 Q So you recall discussion in 1990 about the  
7 fact that you needed to get a bank that was owned by  
8 a supporter because of concern that maybe the bank  
9 officers might disclose, or bank employees, to the  
10 press or to an opponent how much money you had  
11 raised?

12 A No, I didn't say I remember discussion.  
13 That was, I have a general sense that that was -- you  
14 asked me why would you want to use a bank owned by a  
15 supporter. I'm not sure that you would even have to  
16 have that discussion. I think it is, it's just  
17 generally known among people that you are going to  
18 set up a banking relationship in a campaign. You  
19 wouldn't want people supporting your opponents to  
20 know about your banking.

21 Q Now, in prior campaigns had Governor  
22 Clinton taken out, and Mrs. Clinton, taken out loans

1 personally to help pay for various campaign expenses?

2 A I believe so, but again I wasn't directly  
3 involved in those.

4 Q You had an understanding that they did take  
5 out loans?

6 A I have seen reports that they had loans in  
7 the '84 campaign and others, yes. That was one of  
8 the reasons for the fundraiser, apparently, in '85,  
9 because it was an '84 loan.

10 Q Did you have an understanding that in '82  
11 they had taken out loans as well?

12 A I don't know. I don't know whether my  
13 knowledge was specific, at least as of 1990, as to  
14 which campaigns, but almost every candidate I have  
15 been involved with has at one time or another, mostly  
16 for cash flow reasons, taken out bank loans.

17 Q Did you have an understanding as to whether  
18 or not they had taken out any bank loans for the '86  
19 gubernatorial campaign?

20 A Again, I don't specifically remember  
21 knowing about the specific, I don't specifically  
22 remember knowing about any particular campaign at

1 this time.

2 MR. KRAVITZ: Let me state for the record,  
3 Bob, obviously --

4 MR. GIUFFRA: I have no intention of going  
5 into this other than asking the basic questions about  
6 whether this was a standard thing, they would take  
7 out loans at the beginning of each --

8 MR. KRAVITZ: I think the point is the only  
9 potential relevance of this is to determine whether  
10 or not there was anything unusual about the fact the  
11 Clintons took out personal loans in the 1990  
12 campaign. Is that fair to say?

13 MR. GIUFFRA: That is fine. That was the  
14 reason for the question.

15 THE WITNESS: Again, under Arkansas laws,  
16 it maybe under federal law, all loans had to be  
17 personal, because the statute provides that a loan is  
18 a contribution and the statute provides, one, that  
19 corporations can't make contributions, and that the  
20 only person who is not subject to the limitations  
21 under the law, \$1,500 limitations, are the candidate,  
22 his wife and their family. So to say the loan was

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1 personal is redundant, I guess, because it had to  
2 be. It couldn't have been any other way. And yes,  
3 my experience with campaigns was that for mostly cash  
4 flow reasons, sometimes for fundraising, yes, cash  
5 flow reasons, almost all of them had borrowed money  
6 at some point.

7 Q But it was your understanding that in prior  
8 campaigns Governor Clinton had taken out loans in his  
9 personal capacity?

10 A I probably knew that. Again if you are  
11 asking me whether I remember learning that at some  
12 point, I think I probably knew that. I was in  
13 Arkansas during a good number of those years. I  
14 probably read stories when the reports came out that  
15 reflected loans.

16 Q And do you recall any discussion at the  
17 start of the 1990 campaign about the fact that the  
18 Governor might need to take out loans in his personal  
19 capacity in order to pay campaign expenses?

20 A No. I don't think any candidate when he  
21 starts off believes that that is necessary.

22 Q Was the fact that the campaign might need,

1 or that the president -- strike that.

2 Was the fact that the Governor and his wife  
3 might need to take out loans a factor in the decision  
4 to send the banking business for the '90 campaign to  
5 the Perry County Bank?

6 A No. I assume we would have thought we  
7 could have taken a loan from any bank that we had a  
8 banking relationship with.

9 Q Who was the contact person at the Perry  
10 County Bank, at least as far as you knew, in  
11 connection with the 1991 campaign?

12 A At some point I began dealing, when I had  
13 dealings with them, I dealt with either Neal Ainley  
14 or Helen Brendon, B-r-e-n-d-o-n.

15 Q Who is Helen Brendon?

16 A She's an employee of the bank. I don't  
17 know what her title was.

18 Q Was she a lending officer?

19 A This is a small bank, Bob. I think they  
20 had like five or six employees. I assume they are  
21 all lending officers, all cashiers, they are all  
22 probably vice presidents, but I don't know what kind

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1 of title she had.

2 Q Did you have any understanding as to what  
3 the size of the bank was in terms of assets in 1990?

4 A No.

5 Q Under \$50 million?

6 A I have no idea. I had no sense of it.  
7 It's a small bank, small town.

8 Q Did you have any discussion with anyone  
9 during the 1992 presidential campaign about the Perry  
10 County Bank and the 1990 campaign?

11 A Yes.

12 Q With whom did you have such discussions?

13 A Well, I guess the first one I remember was  
14 with David Ifshin. There came an issue at some point  
15 about the loans we had and whether we had reported  
16 the '90 campaign loans on the '92 financial  
17 disclosure forms, and I believe it turned out we  
18 hadn't originally, so we amended the reports to  
19 reflect the loans. If I remember right, I believe  
20 Mrs. Clinton got a renewal notice and it reminded her  
21 of that and she brought it to our attention and we  
22 amended the report.



1 MR. COLE: Were the reports you are  
2 referring to 1992 reports or 1991 reports?

3 THE WITNESS: They really don't have a date  
4 on them, as I remember. Once you announce as a  
5 political candidate, you have to file a report within  
6 some period of time, a financial disclosure, and then  
7 I think you have to do it maybe periodically  
8 thereafter. So the first one we filed was probably  
9 in October of '91. I think we realized in early '92  
10 that we had not included these loans on that and we  
11 filed an amended report sometime in January or so of  
12 '92 to reflect the loans, later in the campaign.

13 BY MR. GIUFFRA:

14 Q This is a report to the Federal Election  
15 Commission?

16 A Either the Federal Election Commission or  
17 it may be the ethics disclosure. I'm not quite  
18 sure. Some are required of all federal employees,  
19 some of Senators, others who are candidates for  
20 federal office. I think a Senate candidate also  
21 maybe has to file a modified version. I'm not quite  
22 sure who you file it with, but it could well be the

1 FEC.

2 Later in the campaign we still had the debt  
3 and we made an effort through some of the people who  
4 had been supportive in the '92 campaign to see if  
5 they would be willing to give a contribution to help  
6 pay off the Clinton for Governor debt, so we raised  
7 some money toward the end of the campaign, so we had  
8 more discussion of Perry County Bank and the bank  
9 loans at that time.

10 Q So as of late 1991 Governor Clinton had two  
11 loans of \$50,000 that were outstanding to the Perry  
12 County Bank?

13 A I think that is about right, yes.

14 Q And these were loans that were in Governor  
15 and Mrs. Clinton's personal capacity?

16 A Correct.

17 Q And they were unsecured loans?

18 A Correct.

19 Q Were there any discussions during the '92  
20 campaign in the early part of the campaign that steps  
21 should be taken to repay or retire the debt of  
22 \$100,000 from the '91 campaign?

1 A No. In fact the discussion was just the  
2 opposite.

3 Q What was the discussion with regard to the  
4 debt that was outstanding from the '90 campaign  
5 during the early portion of the '92 presidential  
6 campaign?

7 A I think the sense was that as long as we  
8 had sufficient funds to pay down or pay the interest  
9 as it became due, that we shouldn't divert  
10 fundraising for the '92 campaign to pay off the '90  
11 campaign. That between the two it was more important  
12 at that point for us to be raising money for the '92  
13 campaign and that we would defer serious fundraising  
14 on behalf of the '90 campaign so we weren't competing  
15 with ourselves.

16 Q Did anyone discuss with you or make a  
17 recommendation to you that the campaign take steps in  
18 early '92 to pay off the debt from the '91 campaign?

19 A Not that I recall.

20 Q Were there any other discussions of the  
21 relationship between the Perry County Bank and the  
22 '90 campaign? Strike that.

1 During the '92 presidential campaign do you  
2 recall any other discussions concerning the role of  
3 the Perry County Bank in the '90 campaign?

4 A Other than when we disclosed these loans,  
5 there was inquiry made I think of the Perry County  
6 Bank, but beyond that, other than press inquiries,  
7 no, I don't remember any.

8 Q So the first you would recall is a  
9 discussion with Mr. Ifshin sometime after the initial  
10 campaign disclosure form was filed, and that would  
11 be, what, like around Christmas time?

12 A Yes, around the first of the year, I  
13 believe.

14 Q In which Mrs. Clinton had received papers  
15 to extend the loans, right, and those extension  
16 notices reminded her of the need or of the fact that  
17 you guys were the borrowers, that the campaign --

18 A That they were the borrower, he is, and it  
19 should be reported on their personal, whatever ethics  
20 report or financial disclosure report they file.

21 Q And why was it left off initially?

22 A Nobody thought about it.

1 Q Was there any discussion of the fact that  
2 people viewed this as a debt of the campaign rather  
3 than of the Clinton's personally?

4 A I think to the extent, yes, I think if you  
5 asked anybody who knew, in a technical sense they  
6 would have told you that the Clintons were personally  
7 on the debt. It was clear I think that we were going  
8 to try to do fundraising through the campaign to pay  
9 off the debt, but ultimately if we were unsuccessful  
10 in raising enough money the Clintons would have to be  
11 responsible, but I think everybody thought that  
12 before they would write a personal check for it we  
13 would try to do additional fundraising to raise the  
14 funds to pay it off.

15 Q Did you have any discussions with Governor  
16 Clinton during the '92 presidential campaign about  
17 any loans outstanding to Perry County Bank from the  
18 '91 campaign?

19 A I'm sure we had a discussion about the time  
20 that we filed -- there was a press story and we filed  
21 an amended disclosure report about what was going on  
22 and what it involved, but specifically I don't

1 recall, but my gut is that he and I would have talked  
2 about it. I would have told him what we were doing.

3 Q And this would have been after a press  
4 story disclosing the fact the campaign was amending --  
5 strike that -- that the President and, that the  
6 President was amending his FEC disclosure form?

7 A Yes, I don't quite remember the sequence of  
8 how, whether we had already amended it or whether it  
9 was as we were about to amend it or whether the press  
10 already knew about it or whether they learned about  
11 it after. Again all of that is sort of in there  
12 somewhere, but it would have been around that time  
13 that we were having those discussions, yes.

14 Q Did you have any discussions with  
15 Mrs. Clinton during the presidential campaign about  
16 the Perry County Bank and any loans outstanding to  
17 the Perry County Bank from the '90 campaign?

18 A I don't recall having any.

19 Q Did you discuss the subject with Betsey  
20 Wright?

21 A I don't think so, unless, again, if she had  
22 had, at some point later -- she wasn't even there in

1 January. She came I believe in late February, early  
2 March. After she came if there were press inquiries  
3 about the Perry County Bank she might have asked me a  
4 question about it and I might have answered it, but I  
5 don't remember specifically that happening, but it  
6 would be, if there were press inquiries or other  
7 inquiries about the Perry County Bank, that would  
8 have been probably what would have happened, but  
9 again the only sort of two major events involving the  
10 Perry County Bank that I remember was amendment of  
11 the financial disclosure form and the fundraising  
12 toward the end.

13 Q Did you have any discussion with Mr. Blair  
14 during the presidential campaign about the  
15 outstanding loans to the Perry County Bank?

16 A Can't imagine, no, I don't think so.

17 MR. KRAVITZ: Let me interrupt for one  
18 second. I haven't objected because I thought this  
19 was going to be a brief series of questions. My  
20 reading of the Resolution is that we are authorized  
21 to investigate the lending activities of the Perry  
22 County Bank. We are not authorized to investigate

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1 the activities of the '92 Clinton for President  
2 campaign with regard to the lending, with regard to  
3 the Perry County Bank. Maybe you can articulate for  
4 the record where you think this is heading.

5 MR. GIUFFRA: I have several more questions  
6 to ask about this subject. Throughout these  
7 proceedings we have had numerous examination of  
8 witnesses about matters relating to, for example,  
9 discussions concerning Whitewater during the  
10 presidential campaign, Madison Guaranty during the  
11 1992 presidential campaign, and now the Perry County  
12 Bank loans from the '90 campaign, discussions of  
13 those during the '92 campaign. I think it's fairly  
14 within the Resolution. Obviously steps taken in  
15 1992, concerned in 1992 about how things were handled  
16 in 1990 were relevant.

17 MR. COLE: That is a different thing than  
18 steps taken in 1992 to repay the debt. Is it your  
19 view the Resolution gives you authority to inquire  
20 into great detail about how the debt was to be repaid  
21 during the '92 campaign? Seems to me that is a  
22 different thing than was contemplated when the



1 Resolution was adopted.

2 MR. GIUFFRA: I think the Resolution fairly  
3 would permit me to examine on those subjects.

4 MR. NAPPI: Even if you narrowly define the  
5 lending policy as to what they require as far as  
6 payment or repayment of the loans, these loans are  
7 still outstanding from the '92 relationship.

8 MR. GIUFFRA: The lending relationship  
9 wasn't extinguished until the loan was paid off;  
10 therefore, steps taken to extinguish the loans become  
11 relevant. I don't want to get into a speech. We  
12 have had so many speeches about this. I'm asking a  
13 few more questions and then will go on.

14 BY MR. GIUFFRA:

15 Q Do you recall who was involved in steps to  
16 repay the loans outstanding to the Perry County Bank  
17 from the '92 campaign, during the '92 presidential  
18 campaign?

19 A I believe primarily Eli Segal.

20 Q Who is Eli Segal?

21 A He is a, he was the head of the National  
22 Service Program up here. He was a businessman from

1 Boston who came down and was active in the campaign.  
2 I'm not exactly sure what his formal title was in the  
3 '92 campaign.

4 MR. COLE: Before we go further, I don't  
5 want to make a lot of speeches. My goal would be to  
6 expedite this, not delay it, but I think you have a  
7 point in terms of the repayment of the loans and any  
8 dealings with the bank in that regard in 1992.

9 However, if you intend to inquire in great  
10 detail about the fundraising to repay the loan, I  
11 think that is a different thing and outside the  
12 scope, and my present inclination is to instruct the  
13 witness not to answer those until getting a ruling  
14 from the Chairman on that, because at 5:00 on  
15 Saturday I'm not going to sit here for hours while  
16 you examine on how the money was raised.

17 MR. GIUFFRA: I don't have any interest in  
18 that.

19 MR. COLE: Good. We can go on.

20 MR. GIUFFRA: We don't have any problems.  
21 (Discussion off the record.)

22 BY MR. GIUFFRA:

1 Q Do you recall any discussions during the  
2 1992 presidential campaign in which anyone expressed  
3 any concern that there might be attention called to  
4 the relationship between the Perry County Bank and  
5 the Clinton campaign in 1990?

6 A Repeat the question, please.

7 Q It was not the best phrased question.  
8 During the 1992 presidential campaign, did you have  
9 any discussions with anyone in which either you or  
10 the other parties to the conversation expressed  
11 concern about the Perry County Bank's role in the '90  
12 campaign, including the fact that there were loans  
13 outstanding?

14 A I think the answer is no. I don't recall  
15 any such concerns. We knew we had the loans. We  
16 knew the loans had to be paid off. There may have  
17 been some people who thought they should just go  
18 ahead and pay it off. Let's go out there and raise  
19 the money to pay it off.

20 Q Do you recall who that would have been?

21 A No. I think the other judgment was we  
22 don't want to interfere with our '92 fundraising. We

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1 don't want to compete with ourselves, let's not pay  
2 the loans off now, let's wait until later.

3 Again I don't think it was a heated  
4 discussion or long discussion. I think the decision  
5 was made not to worry about the '90 loans during the  
6 '92 campaign until we got to some point where it  
7 wasn't competing with ourselves for raising money  
8 for '92.

9 Q Was there any concern expressed, do you  
10 have any understanding as to whether any concern was  
11 expressed by anyone during the '92 campaign about the  
12 fact that the Governor had a \$100,000 debt still  
13 outstanding to the Perry County Bank from the '90  
14 campaign?

15 A No. If you have something you are  
16 referring to, you might be able to refresh my  
17 memory. I don't remember, other than when we sort of  
18 first announced that we had these loans and that we  
19 hadn't put them on our financial disclosure form,  
20 except for that sort of flurry that happened for a  
21 day or two, I think it died down and I don't frankly  
22 remember much discussion about it at all until we got

1 to the end of the campaign and we paid them off.

2 Q I also want to state for the record I  
3 appreciate your courtesy and indulgence here today.

4 A Thank you.

5 Q As well as Mr. Snyder's. You have always  
6 been a very courteous witness.

7 A Maybe you can be a character witness for  
8 me.

9 Q I have no objections to doing that, the way  
10 you have handled yourself in these depositions.

11 MR. COLE: We always strive to be polite.

12 MR. GIUFFRA: Much more polite than the  
13 people from New York.

14 (Discussion off the record.)

15 BY MR. GIUFFRA:

16 Q At some point, I show you, let me, this  
17 document is Bates number 200080 through 82. It's a  
18 letter from a Rush Deacon of the law firm of Williams  
19 and Anderson, Little Rock, Arkansas to the Internal  
20 Revenue Service, dated July 18, 1994. Have you seen  
21 this letter before and the attachments?

22 A I believe so, yes.

1 Q When did you first see the letter and the  
2 attachments?

3 A I think my lawyer showed them to me  
4 sometime after they were filed. I would say after  
5 July 18. I don't know when.

6 Q When did you first learn that there might  
7 be an issue regarding the filing of currency  
8 transaction reports, and we can call them CTRs, in  
9 connection with the 1990 Clinton gubernatorial  
10 campaign?

11 A I don't recall. It was sometime, it was  
12 probably sometime around this time, but I don't  
13 remember. Maybe my attorney maybe told me that he  
14 understood that there was some question about it or  
15 something, but I frankly don't remember the event.

16 Q Other than communications with your  
17 attorney, and let's make it clear for the record we  
18 have no interest in obviously examining you about  
19 such conversations, do you recall speaking to anyone  
20 else at about the time that the Perry County Bank  
21 sent these CTRs to the IRS?

22 A There was some point where the press got

1 hold of this story, and I believe that I spoke to  
2 someone with Williams and Anderson, where they said  
3 basically I think what this letter said, which was  
4 that it was a mistake, and I think I asked them if  
5 they would be willing to talk to the reporter and  
6 state that on the record.

7 MR. SNYDER: Short break?

8 MR. GIUFFRA: Sure, no problem.

9 (Recess.)

10 BY MR. GIUFFRA:

11 Q Let me try to clarify the record,  
12 Mr. Lindsey. How did you first learn there might be  
13 an issue involving CTRs in transactions that occurred  
14 involving the Clinton for Governor campaign in 1990?

15 A My lawyer told me.

16 Q Did you have any subsequent discussions  
17 with anyone other than your counsel about this issue  
18 of CTRs in the 1990 Clinton gubernatorial campaign?

19 A Again, I believe at some point I spoke  
20 directly to Peter Kumpe, who was a lawyer at Williams  
21 and Anderson, about either talking to a New York  
22 Times reporter, I think New York Times reporter.

1 Q Kumpe, K-u-m-p-e?

2 A Kumpe, who was writing a story about this  
3 to explain basically that it was a mistake and how  
4 the mistake occurred.

5 Q Did you speak to anyone else?

6 A Other than my wife, family members, we have  
7 not talked about it other than, again, we have talked  
8 about what I have gone through in the last 2-1/2  
9 years.

10 Q Other than family?

11 A Yes.

12 Q Your family or lawyer?

13 A Well, a lot of people asked me how I'm  
14 doing.

15 Q Other than questions about how are you  
16 doing and questions relating to your situation, but  
17 did you discuss, for example, with Mr. Ainley?

18 A No.

19 Q Didn't call Mr. Ainley?

20 A No.

21 Q Did you call Ms. Cabe?

22 A I don't think I have ever had a substantive



1 conversation with Ms. Cabe about it.

2 MR. SNYDER: He has been interviewed by a  
3 number of people with regard to proceedings going on  
4 with this subject.

5 BY MR. GIUFFRA:

6 Q Excluding the Office of Independent  
7 Counsel.

8 A No, I don't think I spoke to Ms. Wright.  
9 She wasn't involved. When we had conversations I'm  
10 not very communicative. She took offense at that.

11 Q Sometimes it's best not to be communicative  
12 about these kind of things. Did you have any  
13 conversations with Linda Cooper?

14 A No.

15 Q Bob Nash?

16 A Bob Nash has told me he has been asked  
17 whether he went to the Perry County Bank around the  
18 day before the general election, but other than him  
19 telling me what he had been asked, no.

20 Q And that was questions he was asked by the  
21 Senate?

22 A Either Senate or the Independent Counsel.

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1 I don't know if I know who he said asked him, but he  
2 was asked whether he had gone to Perry County Bank  
3 the day before the election.

4 Q Did you discuss with him when he did in  
5 fact go to the Perry County Bank before the 1990  
6 general election?

7 A I have a vague memory that he took a loan  
8 application to the Perry County Bank on the Monday  
9 before the general election.

10 Q At your direction?

11 A Yes. But again, it could have been someone  
12 else, but it easily could have been him.

13 Q Do you recall anything further about any  
14 discussions you might have had with Mr. Nash with  
15 either bringing an application to the Perry County  
16 Bank, withdrawing cash from the Perry County Bank or  
17 anything along those lines?

18 A No, I think he told me he was asked whether  
19 he had taken cash, and he said he hadn't, but other  
20 than that, and I think he indicated he didn't know  
21 what he had, that somebody asked him to take  
22 something up there, but he didn't know what it was,

1 but I think it was a loan application.

2 Q Your best recollection is that he went to  
3 the Perry County Bank to drop off a loan application?

4 A Right. We borrowed money on a Monday  
5 before the election.

6 Q Do you have any recollection as to whether  
7 Mr. Nash picked up anything at the Perry County Bank  
8 right before the election?

9 A I don't believe he did. He didn't at my  
10 direction, so I don't believe he did. He was asked  
11 one time whether he ever dealt with cash. He said he  
12 bought pizza one time and collected the money for it,  
13 but that was about the most cash he ever handled  
14 during the campaign.

15 Q Look at the second document. Did you play  
16 any role in the preparation of this CTR report?

17 A No.

18 Q Did you provide any information to either  
19 officials of the Perry County Bank or their attorneys  
20 to allow them to fill out this CTR report?

21 A No.

22 MR. COLE: Would you identify it for the

1 record?

2 MR. GIUFFRA: 200081 let's focus on first,  
3 dated 7/18/94 and contains a transaction dated  
4 April 25, 1990.

5 A Is there a question?

6 Q Yes, do you recall --

7 A No, I did not provide any information for  
8 this report.

9 Q Let's focus on May 25, 1990. I may have  
10 said April before. I apologize. Do you recall a  
11 transaction whereby the campaign issued a check for  
12 \$30,000 and withdrew \$20,000 in cash from the Perry  
13 County Bank?

14 A No.

15 Q Do you have any recollection of discussing  
16 with anyone -- strike that.

17 Do you have any understanding as to whether  
18 the campaign made any large cash withdrawals from the  
19 Perry County Bank in May, 1990?

20 A Yes, May 25.

21 Q May 25, 1990?

22 A Yes, we did. We withdrew \$30,000.

1 Q What do you recall about the circumstances  
2 surrounding that withdrawal of \$30,000 from the Perry  
3 County Bank on May 25, 1990?

4 A Sometime the day or two before May 25,  
5 probably Gloria Cabe, but I don't recall, indicated  
6 to me that we needed \$30,000 for our Get-Out-The-Vote  
7 effort. I contacted someone at the bank, I don't  
8 have a specific recollection as to who, one, to find  
9 out whether or not if we came up there and withdrew  
10 \$30,000 whether the bank would have \$30,000, and to  
11 ask for instructions on how to get there, since I had  
12 never been to the bank.

13 On the morning of May 25, I drove from my  
14 home, I think, in West Little Rock to Perryville,  
15 withdrew the cash, brought it back to the  
16 headquarters, and gave it either to Carol Willis or  
17 Gloria Cabe, I don't remember which, but it would  
18 have been one of those two.

19 Q Who is Carol Willis?

20 A Carol Willis is an African-American male,  
21 but it's C-a-r-o-l, who handled African-American  
22 politics for Bill Clinton, was a member of the

1 campaign staff and was in charge of the  
2 Get-Out-The-Vote effort.

3 Q Did you discuss with Governor Clinton this  
4 withdrawal of \$30,000 from the Perry County Bank on  
5 May 25, 1990?

6 A I don't recall having a conversation. The  
7 Governor would have been aware of the amount of money  
8 that we were committing to the GOTV effort.

9 Q Why do you believe he would have been aware  
10 of the amount of money you were committing to the  
11 Get-Out-The-Vote effort?

12 A I think any sort of matter like that as to,  
13 in all of these there are ranges of how much money  
14 you can or should spend, some people who know from  
15 the high to the low. At some point someone makes a  
16 judgment about what kind of money you will commit to  
17 this, just like you make judgments on what sort of  
18 money you will commit to media, what sort of money  
19 you will commit to direct mail, and my sense is  
20 knowing the President's, then Governor's interest in  
21 these matters, that a decision like this as to the  
22 amount of money to commit to the GOTV effort would

1 not have been made without his knowledge. Now I  
2 don't remember participating in that conversation. I  
3 just do not believe that we would have done this  
4 without his having agreed to it.

5 Q And this \$30,000 withdrawal would have been  
6 for the primary campaign?

7 A Yes.

8 Q That was, what was the date of the primary  
9 election?

10 A The 25th was on a Friday, so it was the  
11 28th or 29th, which would be the following Tuesday.

12 Q The 29th?

13 A Yes. 29th. Yes.

14 Q Now, on the CTR it indicates that you  
15 withdrew \$30,000 in hundred dollar bills or higher.

16 A Yes. I don't know that.

17 Q You don't know where the information would  
18 have been --

19 A I assume, excuse me. I didn't mean to  
20 interrupt. I assume they had some record as what  
21 sort of funds they gave me. I don't have a specific  
22 recollection of them saying here is \$30,000 in

1 hundreds, but I would assume, I don't know how banks  
2 keep their records, that they would have a record of  
3 the kind of, whether they were 50s, 100s or whatever  
4 that they were giving out. You would have to do that  
5 to know whether you had lost money, I guess.

6 Q Now, when you say Get-Out-The-Vote effort,  
7 to what use was this money to be put?

8 A Mostly in Arkansas, and it may be different  
9 in different places, most of your Get-Out-The-Vote  
10 effort is into the African-American community,  
11 primarily in east and south Arkansas.

12 Bill Clinton traditionally, historically  
13 has gotten somewhere between 90 and 95 percent of the  
14 African-American vote. So it's not a question of  
15 persuasion. You don't have to try to convince them  
16 to vote for Bill Clinton, you just need to try to get  
17 them to come to the polls. What Get-Out-The-Vote  
18 money is spent for is you divide it up or go back by  
19 counties and by cities and you put people -- for  
20 example, you hire people on Sunday morning to go to  
21 churches and to put leaflets on the windshields of  
22 all the cars. Again, in Arkansas it's mostly in the



1 African-American community.

2 You hire people on Monday, on Saturday and  
3 Sunday and maybe Monday, since Monday I believe was  
4 Memorial Day, to stand at shopping centers and  
5 shopping areas and go door to door and to distribute  
6 literature to homes reminding them to vote.

7 You may hire people to get on phones and  
8 use lists of phone records and you will call in to  
9 areas where you have identified people previously who  
10 are supportive and urge them to get out and vote.

11 On election day in most of these areas you  
12 provide drivers for people who are unable to drive.  
13 They will go, you call or somehow let it be known you  
14 need a ride. They will go to the house, pick up the  
15 person, take them to the polling spot, wait for them,  
16 let them vote, take them home.

17 You hire people who stand outside of the  
18 polling spots with what is oftentimes referred to as  
19 palm cards, small cards that have a sample ballot on  
20 it, and as people -- which are already sort of marked  
21 so people know between the two candidates for  
22 Governor, the preferred candidate is Bill Clinton,

1 and between the two candidates for Lieutenant  
2 Governor, the preferred candidate is X.

3 You hand these out as a way, a persuasion  
4 or to remind people. Sometimes some of these people  
5 have difficulty reading, so they have, they can match  
6 up the form with the machine. You do all of this in  
7 order to try to maximize the number of people who  
8 vote in areas where you expect to get 80, 90, 95  
9 percent of the vote. This is what GOTV in Arkansas  
10 is. In other areas it may be the labor vote, may be  
11 the Italian vote, may be other groups that are  
12 traditional Democratic or Republican voting blocks  
13 that you are trying to turn out.

14 Q And it was your understanding that in prior  
15 campaigns Get-Out-The-Vote money had been withdrawn  
16 from the bank in which the campaign had an account?

17 A I don't know how it was handled in prior  
18 campaigns.

19 Q Have you ever discussed that subject with  
20 Betsey Wright?

21 A No.

22 Q She's given testimony to the Committee in

1 which she was critical of the way you handled the  
2 withdrawal of this Get-Out-The-Vote money from the  
3 Perry County Bank. Have you ever discussed that?

4 MR. COLE: I was there for the deposition.  
5 I'm not sure she said she was critical.

6 THE WITNESS: She thought it was  
7 excessive.

8 MR. COLE: She had questions about the  
9 amount. She said perhaps that was being critical.

10 THE WITNESS: She later said that was more  
11 like Monday morning quarterbacking. I sometimes  
12 listen to the testimony. Again I don't think I made  
13 the decision as to the amount. I was given the  
14 amount. I don't know whether it was excessive or not  
15 excessive. This was, despite the fact Bill Clinton  
16 won by 55 percent of the vote in the primary, this  
17 was a close election.

18 Bill Clinton announced late for Governor.  
19 There was a question as to whether or not he had the  
20 fire in the belly. I think he may have even made  
21 reference to that during his announcement speech,  
22 which gave one of his opponents, Ron McCray, sort of

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1 a basis for an ad.

2 There was a big question as to whether or  
3 not Bill Clinton still sort of wanted to be Governor  
4 or whether or not he didn't have anything else to  
5 do. There was a fear. There was like four or five,  
6 I don't quite remember, Democratic opponents. There  
7 was a fear if Bill Clinton got less than 50 percent  
8 of the vote and was forced into a runoff, all that  
9 sort of opposition vote would coalesce and there  
10 would be political problems.

11 Again, this is probably a more competitive  
12 primary than any primary Bill Clinton had had since  
13 the '82 campaign, after he had lost and when he came  
14 back. I didn't decide on the amount, I don't  
15 believe. I don't think I participated, though I may  
16 have participated, but I really had no gauge to gauge  
17 it against other campaigns.

18 BY MR. GIUFFRA:

19 Q Do you know whether the Governor made the  
20 decision as to how much Get-Out-The-Vote money would  
21 be withdrawn from the Perry County Bank?

22 MR. SNYDER: Did you see whether he made --

1 THE WITNESS: What other way is there? The  
2 only way is to basically fund a Get-Out-The-Vote  
3 effort.

4 BY MR. GIUFFRA:

5 Q In terms of the amount, do you know whether  
6 he was the one that made the decision?

7 A No. As I said earlier, I believe he was  
8 aware of it, whether or not he, so if you are  
9 Governor and you are aware of it and you don't  
10 object, I guess you make the decision, but I don't  
11 know whether someone came to him with this amount and  
12 he said that is fine or whether or not he was  
13 involved in that..

14 Q Have you ever had any discussions with  
15 Betsey Wright about the amount of money that was,  
16 cash that was used for the Get-Out-The-Vote in the  
17 '90 campaign?

18 A No, the only reference I saw was in the  
19 hearing when they referred to her deposition.

20 Q You never talked to her about it?

21 A No.

22 Q Now, what is your recollection as to how

1 the actual withdrawal of the \$30,000 was  
2 accomplished?

3 A What is your question?

4 Q Let me restate. First of all once you gave  
5 the \$30,000 over to either Ms. Cabe or you mentioned  
6 another person?

7 A Carol Willis.

8 Q Carol Willis, you had no other involvement  
9 with the money?

10 A No.

11 Q So you don't know, really know how it was  
12 used, other than just what they reported back to you?

13 A Well, I believe Mr. Willis had a meeting  
14 either that afternoon, Friday afternoon or Saturday  
15 in which all these people who were sort of in charge  
16 of this were coming to Little Rock, but I didn't  
17 attend that meeting, and I assume that the money was  
18 distributed at that meeting.

19 MR. COLE: I want to go off the record a  
20 minute.

21 (Discussion off the record.)

22 BY MR. GIUFFRA:

1 Q So Mr. Lindsey, it's your understanding at  
2 a meeting later that day Mr. Willis divided that up  
3 then between the various people involved?

4 A Either that day or the next morning, but  
5 your GOTV effort really starts on Saturday, because  
6 you have the weekend, you clearly want to have people  
7 out Sunday putting this literature on church, on  
8 windshields of churches, so you have to have this,  
9 the people hired, and basically this money is used to  
10 hire people, day labor, to buy them lunch, to buy gas  
11 money, those sorts of expenses, all fairly small  
12 individual expenses.

13 Q Now, in connection with the withdrawal of  
14 the \$30,000 from the Perry County Bank on May 25,  
15 1990, do you recall discussing that withdrawal with  
16 Mr. Ainley?

17 A I believe I had a conversation with him in  
18 which I told him we wanted to withdraw \$30,000  
19 dollars and I was calling to find out whether they  
20 would have the money if we came up there, and to get  
21 directions on how to get there.

22 Q Do you recall any discussions with

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1 Mr. Ainley about the need to file CTRs in connection  
2 with the withdrawal of this money from the Perry  
3 County Bank?

4 A No, I don't believe I had any conversation  
5 with Mr. Ainley about CTRs.

6 Q Were you aware on May 25, 1990 of the need  
7 to file CTRs -- strike that.

8 Were you aware on May 25, 1990 that federal  
9 law required banks to report cash transactions of  
10 more than \$10,000?

11 A Well, I gave no thought to it, so was I  
12 aware of it? I didn't think about it. If you ask me  
13 whether I, abstractly, if someone had said do you  
14 know of some law that requires banks to report cash  
15 transactions, I think I would tell you I sort of  
16 vaguely knew that there was such a law, but I  
17 wouldn't have known any of the details. I wouldn't  
18 have known whether this was the type of transaction  
19 that would have been required to be reported. So the  
20 answer specifically is I gave no thought to CTRs at  
21 all as an abstract proposition. You probably could  
22 have jogged my mind and said do you know something



1 about drug running and that kind of stuff. It might  
2 have jogged my mind that there was some sort of  
3 reporting requirement.

4 Q Were you a banking lawyer?

5 A No, I was labor law.

6 Q So you would not have come across the need  
7 to file CTRs in the course of your practice?

8 A No. I don't think I ever came across that  
9 need.

10 Q It's not a regulatory requirement that you  
11 were familiar with from your practice?

12 A No.

13 Q Did you discuss with anyone during the 1990  
14 campaign anything about the regulatory requirement  
15 that banks report withdrawals of cash of more than  
16 \$10,000?

17 A No.

18 Q So you never had a discussion with CTRs  
19 with Governor Clinton, Ms. McCabe or anybody else?

20 A No.

21 Q Did you have any discussions with  
22 Mr. Branscom about the need to file a CTR?

1 A No. I don't believe I had a conversation  
2 with anyone. I don't have any recollection of ever  
3 hearing about CTRs during the '90 campaign.

4 Q So your first understanding or recollection  
5 of needing to file a CTR in connection with these  
6 withdrawals would have been sometime in 1994?

7 A Correct.

8 Q And that would have been after you became  
9 aware of the fact that the Perry County Bank had  
10 filed these CTRs with the IRS?

11 A I become aware whenever Mr. Snyder told me.

12 Q I don't want you --

13 A I don't know how that relates to this date,  
14 so I don't know, I don't remember that.

15 Q But prior to then you didn't know anything  
16 about the need to file a CTR in connection with these  
17 cash withdrawals?

18 A No. I gave no thought to anything about  
19 CTRs with respect to these transactions.

20 Q Now, on May 25, 1990 did you withdraw all  
21 \$30,000 in one transaction from the bank or was it  
22 divided into four transactions?

1 A It was one transaction. I used four  
2 checks.

3 Q Why did you use, what were the dollar  
4 amounts of the checks?

5 A \$7,500.

6 Q So it was four checks of \$7,500?

7 A Right.

8 Q Why did you use four checks in the amount  
9 of \$7,500 to make this withdrawal of \$30,000 from the  
10 Perry County Bank on May 25, 1990?

11 A At some point before I went up there I got  
12 concerned about a check going through the processing  
13 that was for \$30,000. My concern was that someone  
14 who came across that check in the course of it being  
15 processed might be a supporter of one of our  
16 opponents and would find that amount to be  
17 interesting, make some sort of call up to one of the  
18 campaigns and we would have a press conference on  
19 Saturday, Sunday or Monday about why did Bill Clinton  
20 withdraw \$30,000 from the Perry County Bank on  
21 Friday, and that it would be a diversion and that we  
22 would spend the last three days of the campaign

1 holding counter press conferences or responding to  
2 ads or whatever. I thought that if the amount of  
3 individual checks were less than that, that it might  
4 not draw attention, and therefore I wrote four checks  
5 for \$7,500.

6 Q Were these checks made out to cash?

7 A No, made out to the Committee, Bill Clinton  
8 for Governor Committee, three of them were.

9 Q What was the fourth check made out to?

10 A Committee to reelect Bill Clinton. I think  
11 it was just a screw up. I think I wrote "Committee"  
12 and I only had four checks, so I finished a name and  
13 then I used the right name, which is Bill Clinton  
14 Committee.

15 Q Then when you went up to, was it a teller  
16 window you asked for the money in cash?

17 A No, I called them. They knew I was  
18 coming. I wanted \$30,000. I gave them four checks  
19 and they gave me \$30,000.

20 Q Do you remember who you dealt with at the  
21 bank?

22 A I think I dealt with Neal Ainley, maybe

1 with Helen Brendon as well.

2 Q You are fairly certain you dealt with  
3 Mr. Ainley?

4 A Yes.

5 Q Did you have any discussions with  
6 Mr. Branscom about the use of four checks?

7 A I don't believe so.

8 Q Did you have any discussion with anyone  
9 about the use of four checks to withdraw the \$30,000  
10 in cash?

11 A I probably would have told Gloria Cabe,  
12 because on all checks you had to have, of over \$100  
13 or \$200 you had to have two signatures, and the only  
14 two people who could sign checks would be Gloria and  
15 me. I often went in and signed checks in blank,  
16 because I wasn't around the headquarters and they  
17 needed them to pay bills in the ordinary course. She  
18 normally didn't. My signature would be on a check  
19 usually before hers. Whether I went up there, I  
20 think I would have had to get her to sign these four  
21 checks so I could cash them, so I may have just put  
22 them in front of her and she may have just signed

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1 them. I don't have any specific recollection of a  
2 conversation or if she said or I may have volunteered  
3 why four checks not one.

4 At some point I told Neal Ainley why four  
5 checks not one. Whether I did that in a telephone  
6 conversation when I was telling them I was coming or  
7 whether I did it when I got to the bank I don't know,  
8 because I don't remember when I decided to do it.

9 Q Again you told Mr. Ainley that the campaign  
10 was concerned that there might be publicity about the  
11 fact you were cashing a check for \$30,000?

12 A Right. Someone in the processing might  
13 come across it and it would be of interest to them  
14 because of the size of the check.

15 MR. COLE: So Mr. Ainley would have  
16 understood from the discussion you had with him that  
17 there was a concern about someone, about attention  
18 being brought to a large cash transaction?

19 THE WITNESS: Yes. Not so much connected  
20 with them, because they obviously, it's a small  
21 bank. They knew. I didn't know -- you may know,  
22 there's a company called Systematics in Little Rock

1 that does check processing for a lot of smaller  
2 banks. I don't think I knew at the time whether or  
3 not Perry County Bank used Systematics or used other  
4 people at night. I didn't quite know how they did  
5 it, but I sort of knew oftentimes they bring in  
6 outside people to do check processing, and my concern  
7 was that one of those people would come across this,  
8 find of interest, find it curious, call someone, and  
9 we would be off spending the weekend answering what  
10 the money was for and why we had withdrawn it.

11 MR. COLE: But you didn't have any  
12 discussion with Mr. Ainley about a currency  
13 transaction report?

14 THE WITNESS: No.

15 BY MR. GIUFFRA:

16 Q Did you have any knowledge as to what type  
17 of workers the Perry County Bank hired on weekends?

18 A No. As I was just saying, I don't think I  
19 knew exactly what they did. I knew a lot of banks  
20 use, there is a processing company in Little Rock  
21 that does it for many companies, for many banks in  
22 Arkansas and many banks across the country called

1 Systematics. I didn't know whether they used  
2 Systematics. I didn't know whether they brought in  
3 outside people. My sense was a small bank couldn't  
4 do it themselves; that they didn't, wouldn't have  
5 enough personnel on a day-to-day basis to do it and  
6 that they would probably bring in somebody else,  
7 either temporary part-time workers or an outside  
8 company, but I don't know if I even knew any of the  
9 details. That was just sort of what was operating in  
10 my mind when I was thinking about writing four  
11 checks.

12 MR. COLE: Were the owners of Systematics  
13 supporters or opponents of Governor Clinton.

14 THE WITNESS: Most likely opponenets. At  
15 various times they may have -- the Stevens had an  
16 interest. Even when they were supportive, it was a  
17 little shaky.

18 MR. COLE: So there was a specific reason  
19 you would have had a concern if indeed Systematics  
20 had been handling the processing of the checks with  
21 regard to that information?

22 THE WITNESS: Yes, and frankly I was



1 thinking more of Systematics than anyone else in my  
 2 mind. I actually, you asked whether I did any  
 3 banking. I don't do any banking, but I am aware  
 4 because I do labor work that oftentimes banks have  
 5 companies like Systematics come in and they sign  
 6 agreements with those companies to make sure they are  
 7 the employees of Systematics and don't become the  
 8 employees of the bank, because I reviewed at one time  
 9 one of these employee agreements. So I did know they  
 10 often hire these people and they often come in and do  
 11 the work, but they are always Systematics employees,  
 12 not Perry County Bank or Worthen Bank employees.

13 MR. COLE: I understand. The point I was  
 14 trying to understand, and I believe you answered this  
 15 question, was that there was a specific reason for  
 16 you to have a concern here, it wasn't entirely a  
 17 theoretical concern on your part?

18 THE WITNESS: That's right, and again the  
 19 political leaning of Sysematics and the people, the  
 20 head of Systematics, would have been questionable,  
 21 especially, again it's hard to distinguish, this was  
 22 a primary, but Sheffield Nelson is always, who was

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1 going to be the general election opponent, was always  
 2 sort of out there on the edge in my thinking, no  
 3 matter what.

4 MR. COLE: Presumably he would not have  
 5 minded if Governor Clinton would have been forced  
 6 into a runoff?

7 THE WITNESS: Presumably.

8 BY MR. GIUFFRA:

9 Q Do you actually recall discussing  
 10 Systematics with anyone or was this your own thought  
 11 pattern?

12 A No, I'm almost sure I would have said to  
 13 Mr. Ainley if he asked or if he had questioned it,  
 14 again I don't have a specific, I can't remember  
 15 specifically in my conversation with him at all, but  
 16 I would have said I was just concerned about a check  
 17 for that amount and the people who were processing  
 18 the checks seeing it.

19 For example, you will see when we get to  
 20 the Fall that I think I raised the same concern, and  
 21 he basically said, well, you don't have to write a  
 22 check, and it was handled slightly differently in

1 that they, he basically told me in the Fall that all  
2 we had to simply do was transfer the money from, on  
3 the books from one account to the other and that we  
4 didn't have to write a check, so we did it that way.  
5 But I know then he was specifically responding to a  
6 concern that I said either I'm going to do it the  
7 same way I did before because I have the same concern  
8 or something, because I think I was prepared to write  
9 multiple checks in the Fall, and he told me I didn't  
10 have to do that.

11 Q Weren't these four checks drawn on the  
12 Perry County Bank?

13 A That is where our account was.

14 Q But they were drawn on the Perry County  
15 Bank?

16 A Yes.

17 Q So they wouldn't have to go through the  
18 clearance system?

19 A They still have to be processed to go back  
20 into my, for us to ultimately get them back in our  
21 statement or have them on our statement, they still  
22 go through the processing. I don't know enough about

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1 banking.

2 MR. COLE: You don't know whether checks  
3 were segregated by the bank between internal and  
4 external checks drawn on other banks before they were  
5 sent to whatever third party vendor would do the  
6 processing?

7 THE WITNESS: You are way beyond me.  
8 Neither did I know it or --

9 MR. COLE: He is saying they may have  
10 segregated checks internally.

11 BY MR. GIUFFRA:

12 Q You don't know whether they segregated  
13 checks internally and externally?

14 A I have no idea.

15 Q Did you have any discussion with Mr. Ainley  
16 about the need to conceal the fact that the campaign  
17 was withdrawing \$30,000 in cash?

18 A Conceal it?

19 Q From bank employees. You had that  
20 discussion; right?

21 A Well --

22 Q Or conceivably?

1 A The people in the bank knew. The entire  
2 bank, if I remember right, is probably not much  
3 longer than this table, with people back here, but  
4 the room is not, it's not a big bank.

5 Q 20 feet?

6 A Yes 20 feet, 25 feet, I think. So I think  
7 everyone in the bank, which was four or five people,  
8 knew that I was there and what I was doing. So there  
9 was no attempt to conceal it from them. My concern  
10 was other people they brought in who were not full-  
11 time, regular every-day bank employees, and again we  
12 didn't have, I told them, I think I told them either  
13 when I showed up, it's only logical that, again I  
14 don't remember, but it's only logical he would say  
15 why are you doing four checks, so I either told him  
16 on the phone I was going to do it in four checks and  
17 why, or I told him when I got there, and what I told  
18 them was I was concerned. I just, I thought a check  
19 for \$30,000 going through the system would cause more  
20 attention than four checks.

21 Q Did you ask him to take any steps himself  
22 to avoid having attention called to the fact that you

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1 were withdrawing \$30,000 from the Perry County Bank?

2 A No.

3 Q Do you know whether he took any steps to  
4 avoid calling attention to the fact that you were  
5 withdrawing \$30,000 from the Perry County Bank?

6 A Do I know that? I read an indictment.

7 MR. COLE: Some evidence.

8 THE WITNESS: I also read that an  
9 indictment is not evidence, but other than that I  
10 don't have any knowledge.

11 BY MR. GIUFFRA:

12 Q He never told you he was taking certain  
13 steps, any steps to avoid recording that this was a  
14 \$30,000 withdrawal of cash?

15 A No.

16 Q Any kind of documentation that needed to be  
17 filed?

18 A No.

19 Q He never discussed that he was taking any  
20 action with regard to the federal regulatory  
21 requirement to file CTRs?

22 A No, and again I had no sense that there was

1 any requirement.

2 Q Do you know how this transaction was  
3 treated on the cash-out ticket used by the bank?

4 A I have seen since then, yes. I didn't know  
5 at the time, but I have since seen.

6 Q Did you have any discussion with Mr. Ainley  
7 about how the transaction would be treated on the  
8 cash-out ticket back in May --

9 A No.

10 Q -- 1990. What is your understanding as to  
11 how it was treated?

12 A As a \$30,000 withdrawal.

13 Q Do you know how it was treated on other  
14 internal bank documents?

15 A As a \$30,000 withdrawal.

16 Q Did you discuss with Mr. Ainley how the  
17 transaction would be treated on other internal bank  
18 documents --

19 A No.

20 Q -- at the time of the transaction on May  
21 25, 1990?

22 A No.

1 Q Just want to make sure the record is  
2 clear.

3 A I understand. I will wait until you finish  
4 your questions before I give my denials.

5 Q Now, you were responsible for filing state  
6 disclosure reports; correct?

7 A Correct.

8 Q And how was this, was there a state  
9 disclosure report filed in June of 1990?

10 A Yes, 30 days after the primary.

11 Q How was this transaction involving the  
12 withdrawal of \$30,000 in cash from the Perry County  
13 Bank on May 25, 1990 treated in the June 1990 Clinton  
14 campaign state financial disclosure report?

15 A We listed an expenditure of slightly over  
16 \$30,000 for GOTV activities, among a couple of  
17 others, but the expenditures were like \$31- or  
18 \$32,000, most of which was GOTV, and GOTV was listed  
19 as one of the expenditures.

20 Q Other than with your counsel, have you had  
21 any discussion, strike that. Other than with your  
22 counsel and your wife and members of your family have



1 you had any discussion with anyone about the  
2 indictment that the Independent Counsel filed against  
3 Mr. Ainley?

4 A Substantive or just --

5 Q Other than just discussing the fact?

6 A Just discussing the facts, no.

7 MR. SNYDER: Well, again as I said before,  
8 he has been interviewed by a number of people,  
9 lawyers, in connection with the various proceedings.  
10 He has been interviewed by you, by Independent  
11 Counsel, et cetera.

12 BY MR. GIUFFRA:

13 Q Have you had any discussions, though, with,  
14 for example, the White House Counsel's office about  
15 these?

16 A I have explained to people basically what I  
17 have just explained to you. Obviously when this  
18 became a matter where I was a target, when this was a  
19 matter as to whether I was going to be indicted a  
20 year ago May, I would explain to people basically  
21 what happened, what I did, what I didn't do, so  
22 people have heard me say this, but basically it's in

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1 response to "what is this all about," "let me tell  
2 you this is what happened," sort of stuff.

3 Q And you are not aware of any efforts by  
4 anyone connected with the White House to contact  
5 Mr. Ainley?

6 A No.

7 Q Is there anything you want to add to the  
8 record so it's complete on this particular  
9 transaction?

10 A No. My whole point on this is one, I had  
11 no conversation, I gave no thought to CTRs. If you  
12 think about it, now that I know something about CTRs  
13 this makes no sense. We publicly disclosed it on our  
14 report. We had no reason. It was a lawful purpose.  
15 Everybody in Arkansas knew if you put "GOTV" on a  
16 disclosure, expenditure report, would have known what  
17 GOTV was, and if you are Bill Clinton what community  
18 that would have been directed to, and most likely  
19 they would have known that it was mostly handled in  
20 cash. So there was no attempt, it doesn't make any  
21 sense that I wouldn't have, wouldn't have cared  
22 whether somebody be sent to a depository in Ohio when

1 I intended to turn around and report to the people of  
2 Arkansas within 20 days or 30 days exactly what the  
3 transaction was.

4 MR. SNYDER: Do you now know what the law  
5 is regarding how many days the bank had in order to  
6 file a CTR after a cash transaction?

7 THE WITNESS: I think it's 15 days. I'm  
8 not sure. I think that is right. So it's clear that  
9 they could have filed a report after that. My  
10 concern was the weekend before. Again in the Fall we  
11 actually had an incident in the weekend before it was  
12 and fairly disruptive and possibly cost us an extra  
13 \$50,000 to respond to it. Last minute sort of  
14 allegations and charges are difficult to respond to.  
15 My concern was trying to avoid to some extent having  
16 someone come out in Arkansas over the weekend before  
17 the election with this withdrawal.

18 MR. SNYDER: If I could ask one other  
19 clarifying question, just so the record isn't  
20 confused, because Mr. Lindsey testified earlier that  
21 he didn't know how the bank handled processing, but  
22 in his mind at the time he thought maybe there was a

1 company like Systematics. Have you now come to learn  
2 whether Systematics did in fact handle their  
3 processing at the time?

4 THE WITNESS: I don't believe they did. I  
5 actually believe they handled it internally. No one  
6 told me that at the time. Again I assume, I don't  
7 remember the conversation I had with Mr. Ainley,  
8 other than I knew I needed directions and I needed to  
9 make sure the bank had the money. Again I don't know  
10 whether I decided to do this at the time I had that  
11 conversation or sometime between that conversation  
12 and the time I went up there. I decided to do it,  
13 but no one ever told me at the bank, "That is not  
14 really a problem, because we do it ourselves." Now  
15 they did tell me in the Fall they could do it by just  
16 simply transferring the money on the books. They  
17 could do it without any checks. And I said that is  
18 fine, that answers my problem, and that is the way we  
19 did it in the Fall.

20 BY MR. GIUFFRA:

21 Q But you don't recall discussing with  
22 Mr. Ainley how checks were cleared by the Perry

1 County Bank?

2 A No. No.

3 Q Again just to be fair to you is there  
4 anything more anybody wants to add? I think it's  
5 important that this ultimately will be made public  
6 and Mr. Lindsey should have his chance to have his  
7 side of the version of the events out there.

8 THE WITNESS: We don't like to refer to it  
9 as my "version" of events, but okay. The truth is  
10 what we call it.

11 MR. COLE: I think this is at least  
12 implicitly clear in the preceding several pages of  
13 transcript, but I would like to get it in one place,  
14 succinctly if possible. Your testimony is that you  
15 expressed to Mr. Ainley concerns about persons  
16 outside the Perry County Bank learning about a large  
17 \$30,000 cash transaction. Do you have a recollection  
18 of discussing that with him?

19 THE WITNESS: Correct. Again I don't have  
20 a specific recollection, but I assume in explaining  
21 why I was doing four checks I would explain that.

22 MR. GIUFFRA: You just don't recall what he

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1 might have said to you in response?

2 MR. COLE: Can I finish my line. As I  
3 said, I would like to get this out in one place. In  
4 this discussion with Mr. Ainley in which you  
5 expressed a concern about persons outside the bank  
6 learning of large cash transactions, your  
7 recollection is that you did not discuss anything  
8 about the filing of currency transaction reports?

9 THE WITNESS: That's correct, I do not  
10 recall.

11 MR. COLE: And if Mr. Ainley or others at  
12 the bank took it upon themselves not to file or to  
13 stop a currently transaction report from being filed  
14 because of that concern, that is not something they  
15 told you at the time or you had any reason to know or  
16 suspect at the time?

17 THE WITNESS: No.

18 MR. COLE: Okay.

19 BY MR. GIUFFRA:

20 Q When you say you don't recall discussing  
21 CTRs with Mr. Ainley is that, it didn't happen or you  
22 just don't recall ever?

1       A    Well, I don't remember anything with, I  
2 don't remember anything specific about my  
3 conversation with Mr. Ainley. It's like, "Did you  
4 ever hire someone to kill your wife." I didn't have  
5 a conversation. I didn't, but I don't remember a  
6 conversation I had about someone killing my wife. I  
7 didn't have any conversation that I recall about CTRs  
8 with anybody, but I also can't tell you every  
9 conversation I had with everybody because I don't  
10 remember the specifics of them.

11       Q    Do you recall having a specific concern  
12 about the fact that Systematics might be involved in  
13 clearing these checks?

14       A    In my mind that was where my thought  
15 process was. I knew Systematics did it. It was a  
16 type --

17       Q    You thought they did it.

18       A    I thought they did it. I knew they did  
19 check processing.

20       Q    That is an Arkansas firm?

21       A    It's actually a national firm located in  
22 Little Rock.

1       MR. COLE: Your understanding at the time  
2 was that Systematics was either owned or controlled  
3 by Stevens, Inc.?

4       THE WITNESS: That's correct.

5       MR. COLE: And Stevens is a large  
6 investment firm in Little Rock, very active  
7 politically?

8       THE WITNESS: That's correct.

9       MR. COLE: And sometimes had been a  
10 political opponent or not a supporter of Governor  
11 Clinton?

12       THE WITNESS: Depending on what they  
13 consider to be their advantage, yes. Sometimes they  
14 are supporting, sometimes they are not. Doesn't have  
15 much to do with Bill Clinton.

16       MR. COLE: And Stevens, Inc. also had a  
17 friend, Sheffield Nelson, who was the political  
18 opponent of Governor Clinton?

19       THE WITNESS: Although a little shaky.  
20 Sheffield Nelson, as you may know, was sort of one of  
21 the Stevens' protege at Arkansas Louisiana Gas  
22 Company, and they had a falling out after he took



1 over, but, so the relationship is a little shaky, but  
2 still, there were people at Systematics --

3 Systematics was not viewed as a "Democratic" firm.  
4 MR. SNYDER: You testified earlier, I wrote  
5 it down, that CTRs never crossed your mind in May  
6 1990; is that correct?

7 THE WITNESS: Yes.

8 MR. SNYDER: Are you sure of that?

9 THE WITNESS: Yes.

10 MR. SNYDER: If you are sure they didn't  
11 cross your mind in May 1990, what is your testimony  
12 as to whether you discussed CTRs with Mr. Ainley or  
13 anybody else in May 1990?

14 THE WITNESS: I didn't. But then as you  
15 say "What did you discuss," I can't tell. I can't  
16 tell you, because I don't specifically remember the  
17 conversation.

18 BY MR. GIUFFRA:

19 Q You don't remember one way or the other  
20 whether you mentioned Systematics to Mr. Ainley?

21 A I don't know whether I would have mentioned  
22 Systematics. I would have told him I was concerned

1 about someone in the processing of the checks coming  
2 across a \$30,000 check and that being a concern to  
3 me. Whether I would have said it any more refined  
4 than that, I don't know.

5 MR. GIUFFRA: Okay.

6 MR. COLE: Let's move on to the next  
7 topic.

8 BY MR. GIUFFRA:

9 Q Did there come a time prior to the general  
10 election in which the campaign had to withdraw cash  
11 from the Perry County Bank for the Get-Out-The-Vote  
12 effort?

13 A Yes.

14 Q What do you recall about steps you took in  
15 connection with the general election to withdraw cash  
16 from the Perry County Bank for use in the GOTV  
17 effort?

18 A Again at some point shortly before the  
19 Friday before the general election, someone would  
20 have told me they needed to withdraw the amount of  
21 \$22,500 from the Perry County Bank. I would have  
22 called the bank. I think I spoke to Mr. Ainley. I

1 would have said we need to withdraw GOTV money again,  
2 withdraw \$22,500. I believe I would have said I will  
3 do it the same way I did last time, something to that  
4 effect. He indicated to me that it was not necessary  
5 to write any checks, that they could simply transfer  
6 it on the books of the bank, the money, and I said,  
7 "Fine, that takes care of my problem," and that is,  
8 so we didn't send up any checks.

9 Q Did you again mention, do you recall  
10 anything further about your conversation with  
11 Mr. Ainley about a concern you had that the fact that  
12 the campaign was making a large cash withdrawal from  
13 the Perry County Bank might become public and  
14 therefore be used in some political reason in an  
15 adverse way against the Governor?

16 A Well, again I think, when I said I was  
17 prepared to do it the same way we did it before,  
18 again I may have said it more specifically. I may  
19 have said, "I intend to write three checks." I don't  
20 know what I said, but somehow I conveyed to him I was  
21 going to basically repeat the same procedure we had  
22 done in the Spring and the Fall, and that was when he

1 told me that if that was my concern, then I didn't  
2 need to write a check at all. They would simply  
3 transfer it on the books.

4 Q When you say "transfer on the books," what  
5 do you mean by that, what was your understanding?

6 A I understood it would be, they would put,  
7 go into the records and put a withdrawal of \$22,500  
8 and that would simply be, that would just, I don't  
9 know how, manually go into the computer and say to  
10 withdraw \$22,500.

11 Q Again there was no discussion of CTRs?

12 A None.

13 Q In November 1990?

14 A No.

15 Q And you were still unaware of the need --  
16 strike that.

17 You didn't think about the fact that you  
18 needed to file a CTR for cash withdrawal of \$22,500?

19 A Did not think about it.

20 MR. COLE: Did Mr. Ainley say anything to  
21 you at that time about whether between the May 1990  
22 transaction and the November 1990 transaction he had

1 spoken with others in the bank or anything else to  
2 indicate how he had learned in the interim that the  
3 transaction could be handled in the manner that he  
4 suggested?

5 THE WITNESS: No. No, and he didn't  
6 explain to me why, again, which may suggest I didn't  
7 tell him that in my conversation in May, that I may  
8 have just shown up with the checks, because no, there  
9 is no explanation as to, if we could do it this way  
10 why we did it the other way in May. But again it may  
11 have again I just showed up and told him about it the  
12 first time when I showed up with the four checks and  
13 by then he didn't think through the process. He just  
14 said fine, gave me the money, took the four checks.  
15 I don't know, but I know there was no explanation.

16 MR. COLE: However it came to pass in  
17 November, would that suggest to you that he did not  
18 suggest it in May?

19 THE WITNESS: That's correct.

20 MR. COLE: Which might suggest, certainly  
21 suggests that he had taken your concerns seriously,  
22 might suggest that he had looked into it further

1 since your first discussion?

2 THE WITNESS: Could, I just don't know.

3 BY MR. GIUFFRA:

4 Q Did you ever discuss with Governor Clinton  
5 how these cash withdrawals from the Perry County Bank  
6 were structured in connection with the 1990 campaign?

7 A No. I object to the word "structured."

8 Q I'm sorry. That was an inadvertent slip  
9 up. My mistake.

10 A I was even going to object to that one.

11 Q Did you have any, during the 1990 campaign,  
12 did you have any discussion with Governor Clinton  
13 about how you would handle the withdrawal of cash  
14 from the Perry County Bank for GOTV efforts?

15 A No.

16 Q Since that time have you had any  
17 discussions with President Clinton about how you  
18 handled the withdrawal of cash from the Perry County  
19 Bank in connection with GOTV efforts in the 1990  
20 gubernatorial campaign?

21 A When I told him I had received a target  
22 letter, I told him what I thought the basis of the

1 target letter was.

2 Q And you receive the target letter after you  
3 were apprised of the problems with the CTRs?

4 A Yes.

5 Q And your conversation with the President at  
6 that point was just, just to inform him of what you  
7 thought, basically what we have gone through here  
8 today?

9 A Basically.

10 (Witness conferred with counsel.)

11 BY MR. GIUFFRA:

12 Q Did you discuss anything else with the  
13 President during the course of that conversation?

14 MR. COLE: Before you answer, I think we  
15 have a scope issue here, because obviously anything  
16 about the underlying facts of the transaction or what  
17 occurred I think is a legitimate area of inquiry for  
18 us, but discussions about political fallout, personal  
19 consequences, those kind of things are not, I think,  
20 legitimate inquiry, so if you would, Mr. Lindsey,  
21 first answer with regard to whether you discussed the  
22 facts of what happened, and then if there were

1 further discussions let's take those one step at a  
2 time. I may instruct you not to answer those  
3 questions.

4 THE WITNESS: No, the only thing I  
5 explained to him that I was the target and the facts  
6 of what happened, and then we had other discussion,  
7 but that was the only discussion related to the  
8 facts.

9 BY MR. GIUFFRA:

10 Q Did you discuss with him any other issues  
11 that might have, might arise out of the 1990  
12 campaign?

13 A No.

14 Q So the discussions you had with him were  
15 related to possible political fallout and also your  
16 own personal situation at the White House?

17 A Yes.

18 (Discussion off the record.)

19 BY MR. GIUFFRA:

20 Q Do you have anything further to add to your  
21 testimony about the withdrawal of cash from the Perry  
22 County Bank in the fall of 1990?



1 A Well, I didn't do it.

2 Q Let's discuss how was the cash withdrawal  
3 handled?

4 A I don't know why I didn't do it, except we  
5 sent someone else, someone else went.

6 Q Glenda Cooper?

7 A My understanding it is. I'm not sure I  
8 knew that at the time it was Glenda Cooper.

9 Q Did you know Glenda Cooper?

10 A I knew her as a supporter of the  
11 President. I didn't have a personal relationship  
12 with her. I don't think I selected her. I think  
13 someone else did.

14 Q So you did not go to the bank to withdraw  
15 the cash?

16 A No.

17 Q Do you know what happened to the cash after  
18 Ms. Cooper picked it up at the bank?

19 A My understanding is she brought it back and  
20 gave it to Gloria Cabe.

21 Q And then would it have been used for GOTV?

22 A Yes.

1 Q Did you ever have a discussion -- strike  
2 that. Since January 20, 1992 -- strike that. Since  
3 January 1, 1992, have you ever had any discussions  
4 with Glenda Cooper?

5 A About anything?

6 Q Yes.

7 A Not that I recall, but she is a volunteer  
8 in the headquarters, I believe in the presidential  
9 chain, so I could well have spoken to her in  
10 passing.

11 Q Did you ever have any discussions with  
12 Ms. Cooper during the 1990 campaign or thereafter in  
13 which you indicated to her that she should advise you  
14 if anyone asked her about the withdrawal of cash from  
15 the Perry County Bank on November 2, 1990.

16 THE WITNESS: I don't believe so. I don't  
17 recall any conversation like that with her.

18 MR. COLE: So the question as I understood  
19 it would differentiate between whatever you may have  
20 told Ms. Cooper at the time or about the time that  
21 she went to pick up the cash and later in 1992?  
22 Because you asked him January 1992 to the present.

1 MR. SNYDER: 1990.

2 MR. GIUFFRA: Let's go back.

3 THE WITNESS: Two different questions.

4 MR. COLE: I'm confused. I'm sorry.

5 BY MR. GIUFFRA:

6 Q All right. Do you recall sending

7 Ms. Cooper to the Perry County Bank?

8 A No, I don't believe I did.

9 Q Do you think someone else did?

10 A Yes.

11 Q At any time during the '90 campaign did you  
12 have any discussion with Ms. Cooper about the Perry  
13 County Bank?

14 A I don't believe I did.

15 Q After the '90 campaign did you ever have  
16 any conversations with Ms. Cooper about anything  
17 having to do with the Perry County Bank in the '90  
18 Clinton gubernatorial campaign?

19 A No.

20 Q Have you ever had any conversations with  
21 Betsey Wright about Glenda Cooper?

22 A I believe Betsey Wright called me one time

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1 and told me that Glenda Cooper was upset because some  
2 FBI agents had come to her house. I think that  
3 was --

4 MR. SNYDER: Do you mean Betsey Wright?

5 THE WITNESS: Who told me that. I don't  
6 know, maybe it was somebody else. I don't know.

7 BY MR. GIUFFRA:

8 Q You have an understanding that at some  
9 point Glenda Cooper was upset by the fact that at  
10 some point she was contacted by FBI agents about  
11 something that occurred during the 1990 campaign?

12 A Right.

13 Q And you think it was Betsey Wright.

14 A When you asked me the question that is what  
15 I thought.

16 Q What do you recall about the conversation  
17 you had with Betsey Wright or you think Betsey Wright  
18 with regard to Glenda Cooper and the FBI agents?

19 A Again I don't think, I don't think it was  
20 much more than that.

21 Q Did you ever attempt to contact Ms. Cooper  
22 either directly or indirectly?

1 A No. What is indirectly?

2 Q Other than having your Counsel do it?

3 A I have never attempted to have her  
4 contacted.

5 MR. COLE: I want to be sure I understood  
6 Mr. Lindsey's testimony on one point. Is it your  
7 recollection, Mr. Lindsey, that Ms. Wright indicated  
8 that Ms. Cooper was upset because FBI agents were  
9 questioning her about the November 1990 cash  
10 withdrawal from the Perry County Bank specifically or  
11 was it generally inquiry from the FBI? You may have  
12 been clear in your response and I missed it.

13 THE WITNESS: Yes, I think it was that.  
14 Again, Mr. Snyder suggests it may not have been  
15 Ms. Wright, but I thought I heard that she was upset  
16 about having gone to get the money, and that when the  
17 FBI agents came to her house she, that upset her and  
18 that was the reason why they were there, was because  
19 she had gone to get the money.

20 MR. COLE: There are so many FBI agents  
21 questioning so many people in Arkansas I wanted to  
22 know if it was a general or specific inquiry.

1 THE WITNESS: I think, I thought it had to  
2 do with that, and I think I was told that. I don't  
3 know if I knew until then that she had gone to get  
4 the money.

5 BY MR. GIUFFRA:

6 Q Do you have anything further you want to  
7 add with regard to this November 2, 1990 transaction  
8 involving cash at a Perry County Bank?

9 A Again we filed a 30 days post-election  
10 report in which we actually spent more than \$22,500  
11 on GOTV in the Fall, and we reported all of it.

12 MR. GIUFFRA: Mr. Snyder, do you have any  
13 questions on this count?

14 MR. SNYDER: You had asked a question  
15 regarding the May transaction concerning how the  
16 banks cash-out forms and other bank records reflected  
17 the May transaction. I guess I would like to ask  
18 Mr. Lindsey whether with regard to the November  
19 transaction you have since come to learn how the  
20 bank's records reflected the November withdrawal.

21 THE WITNESS: Yes, they reflected it as a  
22 \$22,500 withdrawal.

1 MR. GIUFFRA: Anything more?

2 MR. SNYDER: No.

3 MR. COLE: Nothing.

4 BY MR. GIUFFRA:

5 Q All right. Now, did there come a time in  
6 May, 1990, when Governor Clinton sought a line of  
7 credit from the Perry County Bank?

8 A If "line of credit" is a term of art, no.

9 Q How about a loan?

10 A Yes, we took loans.

11 Q This would have been in May, 1990?

12 A I think the first one would have been in  
13 May 1990.

14 Q Do you recall the amount of the loan?

15 A No. We took a series of them.

16 Q You don't recall the amount of the first  
17 loan?

18 A No.

19 Q This is a document which bears Bates number  
20 200064 to 200065. These are minutes of a meeting of  
21 the Board of Directors of the Perry County Bankshares  
22 dated May 11, 1990, and they indicate on the second

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1 page, 200065, that a motion was made by Mr. Branscom,  
2 seconded by Mr. Hill, to approve a line of credit to  
3 the Bill Clinton campaign in the amount of \$200,000,  
4 upon the signatures of Governor Clinton and his wife,  
5 based on the financial statements. The motion was  
6 adopted unanimously. These minutes are signed by  
7 Mr. Hill and Mr. Branscom. Do you recall anything  
8 about the circumstances surrounding the obtaining of  
9 this line of credit or loan?

10 A No.

11 Q By Governor and Mrs. Clinton?

12 A No.

13 Q Did you have any role in connection with  
14 obtaining this loan?

15 A Well, we didn't borrow money on or around  
16 the 11th of May, 1990. The first time we borrowed  
17 money was probably sometime around the 19th or 20th  
18 of May of 1990. I'm having a little trouble relating  
19 any of that to this. I don't quite know what the  
20 basis for this request was. I don't think I was  
21 involved in it, and I don't think we borrowed  
22 \$200,000. I could be wrong, but whether someone at



1 some point told the bank that we might be borrowing  
2 money is certainly possible, and whether or not the  
3 bank in order to facilitate that went ahead and  
4 approved what they call a "line of credit" so that  
5 when we did borrow it, it would already have been  
6 approved, that could be, but I don't think until I  
7 saw this I wouldn't have answered that that  
8 happened.

9 MR. COLE: Who was the person in the  
10 campaign with primary responsibility for dealing with  
11 the bank on this matter?

12 THE WITNESS: Probably Gloria or I. When  
13 we finally got around to loans, I had some  
14 involvement with getting the loans and making sure  
15 they got signed and got sent back, but I don't  
16 believe I had any conversation in general back around  
17 the 11th of May along these lines. There is a  
18 reason.

19 It goes back to these reports I keep  
20 talking about. There is a 30-day report, which would  
21 have come out around the 29th of, about the 4th of  
22 May, as of the 29th of April. The next report is a

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1 10-day report which would have come out on seven days  
2 out, which would be about the 22nd, as of the 19th.  
3 You would not want, again, to reflect on the 10-day  
4 report that you had bank loans. Again it was an  
5 indication that you, your fundraising wasn't up to  
6 snuff. So we would not borrow money until after the  
7 10-day report deadline passed. And therefore I have  
8 a pretty clear memory we wouldn't have borrowed money  
9 until like the 20th of May, because that would have  
10 been after the deadline for the 10-day report. So  
11 that is why a line of credit in May, May 11 doesn't  
12 really make sense to me.

13 BY MR. GIUFFRA:

14 Q Did you ever have any discussions with  
15 Governor Clinton concerning loans he was going to be  
16 taking out with the Perry County Bank in connection  
17 with the 1990 campaign?

18 A I don't remember specifically if I had  
19 conversations with him. It was generally understood  
20 that our fundraising was not going to cover our  
21 expenditures and that at some point we were going to  
22 have to borrow money. Whether or not I had a

1 conversation with the Governor about that or whether  
2 or not this was just general discussion between  
3 Gloria and I and others I couldn't tell you.

4 Q Did you ever have any discussion with  
5 Mrs. Clinton about the fact you would have to take  
6 out a loan?

7 A I don't think so.

8 Q Did you ever discuss with Mr. Branscom any  
9 loans made by the Perry County Bank to Governor and  
10 Mrs. Clinton in connection with the 1990  
11 gubernatorial election?

12 A The one I remember was the one we took over  
13 the weekend in November. I know I talked to Herbie  
14 about that particular loan. I don't remember if I  
15 had a conversation with him about any of these other  
16 loans or not.

17 Q Okay. What do you recall about the  
18 conversation you had with Mr. Branscom concerning the  
19 loan that was taken out in November 1990 by the  
20 Governor and Mrs. Clinton for use in the 1990  
21 campaign?

22 A There was on the Thursday before the

1 election in. The general election. Sheffield Nelson  
2 began running an ad in which he took a quote out of  
3 context of Governor Clinton's and basically the  
4 words, "raise and spend," and he put it into an ad  
5 and basically suggested that Bill Clinton's theory of  
6 government was to -- I know this comes as a shock to  
7 you, Bob, but Bill Clinton's theory of governing was  
8 to, "raise and spend, raise and spend."

9 Q Raise taxes and spend money?

10 A And he said it over and over again. The  
11 context from which the quote was taken was Bill  
12 Clinton said states, unlike the federal government,  
13 cannot simply go out and raise and spend. They have  
14 to actually have the money to pay their bills. They  
15 can't run on debt, but again it was taken out of  
16 context.

17 Our pollster indicated that that ad was  
18 effective and that our numbers had dropped  
19 significantly and that we needed to go on with a  
20 response. Well, we had already spent or programmed  
21 all the money we had for the campaign. We thought we  
22 were in the sort of down side of the last weekend.

1 We had committed all the money we had.

2 We decided if we were going to buy more  
3 time, buy more spots, get new ads up, we were going  
4 to have to borrow more money. It was on a weekend.  
5 I called Herbie, I think. I said that we needed to  
6 borrow I think another \$50,000. Would the bank lend  
7 us \$50,000. He indicated they would. I took a form  
8 for one of our other loans and whited out all the  
9 dates. The other loan was for \$50,000. I think it  
10 was still the same loan terms, which was a maximum  
11 amount of money they could charge in interest under  
12 state law. I whited out signatures and had the  
13 Clintons sign the loan documents. That is the  
14 document I believe Bob Nash, on the Monday before the  
15 election, took up to Perry County so they could  
16 transfer, once they got that document they could  
17 transfer the money into our account so we could pay  
18 for the ads we had bought all weekend with checks  
19 that, if they hadn't transferred money, we wouldn't  
20 have had the funds for.

21 So that is sort of the one loan that I know  
22 I was directly involved with. I actually was the one

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1 that whited out the forms.

2 Q And that was because it was on a weekend?

3 A It was on a weekend. I wanted them to have  
4 a document in hand on Monday morning.

5 Q The bank?

6 A The bank. That was a loan document that  
7 had the Clinton signature on it. I didn't want us to  
8 be on Monday and Tuesday sending forms down getting  
9 signatures, sending forms back and then have them say  
10 they can't transfer the money until they get it and  
11 in the meantime these checks that we had been writing  
12 to stations to buy every available time coming in and  
13 being bounced, so I'm sure I told them I was going to  
14 take one of his forms and modify it so it would have  
15 the current date.

16 Q Mr. Branscom?

17 A Mr. Branscom. I would modify it and we  
18 would have it to his office or the bank's office as  
19 of the start of business on Monday. Later they sent  
20 us a clean form with the right dates, not whited out  
21 and we signed, the Governor and Mrs. Clinton signed  
22 it and basically we substituted it, but I was

1 concerned that they have a document at the beginning  
2 of business on Monday morning, and so we did it that  
3 way.

4 Q So the money would be then transferred into  
5 the Clinton for Governor campaign account on Monday  
6 because you were writing checks over the weekend to  
7 pay for the TV time you were using to get the ads?

8 A Right. But that is an example of exactly  
9 what, not in the same area, but what my concern was  
10 about late breaking news and the effect it can have  
11 and the need to respond and how distracting in a  
12 small state like Arkansas something like that can be,  
13 and how in that case it cause cost us probably an  
14 extra \$50,000 in order to counter his last ad.

15 Q I want to show you a document, Bates number  
16 200074 to 200075. This is a financial statement  
17 signed by Bill and Hillary Clinton, dated May 21,  
18 1990, Perry County Bank, Perryville, Arkansas and  
19 signed by Hillary Clinton.

20 A Okay.

21 Q Did you have any role in connection with  
22 the preparation of this financial statement?

1 A My guess is I may have. I may have gotten  
2 the forms from the bank, gave them to them and told  
3 them they had to fill them out. This appears, dated  
4 May 21, so again it relates to May 20, which is when  
5 I think we took out our first loan, but they may  
6 have, when they sent us the loan documents, also sent  
7 us a financial statement and said we needed to fill  
8 it out.

9 Q Do you know whether the loan was approved  
10 and made prior to the time the bank received the  
11 financial statements?

12 A Well, you showed me the document dated  
13 May 11. Until then I didn't know when the loan had  
14 been approved or for what amount, so I now know  
15 that. I don't know that. That is right.

16 Q There is a document.

17 A Yes. I don't know.

18 Q Do you recall any discussions with  
19 Mr. Branscom, Mr. Hill or anyone else at the Perry  
20 County Bank about whether the loan would be approved?

21 A No, not specifically.

22 Q Do you have any understanding as to whether



1 Governor Clinton ever spoke to Mr. Branscom,  
2 Mr. Hill, Mr. Ainley or anyone else affiliated with  
3 the Perry County Bank about whether the loan in May  
4 would be approved?

5 A I have no knowledge. I would doubt it, but  
6 I have no knowledge.

7 Q Do you have any knowledge as to whether  
8 anybody from the Clinton for Governor campaign would  
9 have spoken with anyone from the Perry County Bank  
10 with whether this May loan would be approved?

11 A I assume either Gloria or I would have  
12 talked with them and asked them whether we could get  
13 the loan and they would have told us yes, but I don't  
14 remember whether it was me. I don't have a specific  
15 recollection of it being me or Gloria or who, but I  
16 would assume it would have been one of us.

17 By the way, you throw Mr. Hill in there. I  
18 knew Mr. Hill, not related to the Perry County Bank,  
19 in a whole different environment, and I never really  
20 associated him directly with the Perry County Bank.  
21 At one time I did get an accounting form where they  
22 sent me a copy of my statement or a statement and

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1 asked whether or not it was clear and it had his  
2 accounting firm on it, so I knew he did work for the  
3 Perry County Bank, but I did not directly associate  
4 Mr. Hill with the Perry County Bank during 1990.

5 MR. COLE: That would be a routine auditor  
6 inquiry as to whether the information reflected in  
7 the form accurately stated the status of your account  
8 at the time?

9 THE WITNESS: Right. I think I was  
10 somewhat curious because I'm not sure I knew exactly  
11 what Mr. Hill did, to see that it came from a company  
12 that he was a CPA in. That was his company.

13 BY MR. GIUFFRA:

14 Q Do you know whether the Clinton campaign or  
15 Governor and Mrs. Clinton approached any other banks  
16 or S&Ls in connection with seeking to obtain loans  
17 for use in the 1990 campaign?

18 A I can almost assure you that they didn't,  
19 but obviously I don't know what they did, but it  
20 wouldn't make any sense.

21 Q Your expectation was they would take any  
22 loans out with the Perry County Bank?

1       A    That we would at least go to the Perry  
2 County Bank, and if for some reason they wouldn't  
3 lend us the money, we would go somewhere else, but  
4 since every time we requested funds they lent it to  
5 us, I don't think we would have gone any place else.

6       Q    Now, do you recall assisting Mrs. Clinton  
7 in the preparation of this?

8       A    No, I did not.

9       Q    This financial statement?

10      A    No.

11      Q    Look at page 2, which would be 200075.

12      A    Yes.

13      Q    Under the schedule of mortgages owned,  
14 there doesn't appear to be any reference to any loans  
15 outstanding on Whitewater. At this point it might be  
16 the First Ozark loan.

17      A    Yes. Mr. Chertoff raised this in a hearing  
18 with me one time and I believe Mr. Kendall maybe sent  
19 a letter, and on this first page where it says,  
20 "Liabilities, notes payable to banks, secured," I  
21 think he indicated that that was a reference to the  
22 Whitewater loan.

1       MR. SNYDER: For what it's worth,  
2 Mr. Giuffra, I'm certainly no expert on this, but I  
3 would have interpreted "mortgages owned" as referring  
4 to assets. In other words, if one owns a mortgage,  
5 that is payable to you. I think that would be a  
6 mortgage, what I would think is a mortgage owned. If  
7 you owe money on a mortgage to someone else, that is  
8 a liability. I wouldn't call it a mortgage you own.

9       MR. COLE: And everything else on that page  
10 would be assets, stocks, bonds, owned real estate,  
11 owned life insurance carried.

12      MR. SNYDER: The second page I think is for  
13 assets, not liabilities.

14      THE WITNESS: I believe again that the  
15 \$50,000 may be a reference to the Whitewater Citizens  
16 Bank.

17      MR. SNYDER: Probably.

18      BY MR. GIUFFRA:

19      Q    That is not included. On the front of the  
20 page it says, "Mortgages payable on real estate, see  
21 schedule," and there is a schedule. This is under  
22 liabilities, and the schedule attached to this is

1 20075.

2 A "Schedule of real estate owned" is the  
3 third item. "See schedule." I think the \$80,000  
4 mortgage you will see, "amount of mortgage \$80,000  
5 matures 2003," I think that is the third item on the  
6 second page. Which is the condominium. The  
7 offsetting mortgage is reflected over there.  
8 Actually looks like 86, maybe.

9 MR. SNYDER: That's right.

10 THE WITNESS: I think that is the \$80,000  
11 reflected there.

12 MR. GIUFFRA: You didn't prepare the  
13 document, you don't know, we are all engaging in the  
14 realm of speculation.

15 MR. SNYDER: Just trying to be helpful.

16 MR. GIUFFRA: Let's move on.

17 THE WITNESS: But I was at the hearing when  
18 Mr. Chertoff asked me that. I later got a note,  
19 which I made reference to in the record, that that  
20 was my understanding. That is what Mr. Kendall was  
21 saying, the \$50,000 reflected Whitewater.

22 (Recess.)

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1 BY MR. GIUFFRA:

2 Q Did you ever have any conversations with  
3 Mr. Ainley that you can recall about loans taken out  
4 by Governor and Mrs. Clinton from the Perry County  
5 Bank in connection with the '90 gubernatorial  
6 election?

7 A I had lots of conversations with him,  
8 mostly with respect to the repayment of them. When  
9 interest was due he would often call me and tell me  
10 that we had an interest payment due or what we had to  
11 do. Most of the loans were six-month loans, and so  
12 if they weren't paid off in six months the interest  
13 was due in full, and then the loan had to be rolled  
14 over or reissued, I don't know what the banking term  
15 for it is.

16 MR. COLE: Extended.

17 THE WITNESS: Extended. Thanks. So every  
18 six months he would call me and say one of your loans  
19 is due, and I would usually transfer the money to him  
20 for the interest payment and then we would extend the  
21 principal. So I don't remember as many, I don't  
22 remember as many conversations during the '90

1 campaign in which we were talking about making the  
2 loans. I do remember lots of conversations through  
3 '91 and '92 about the repayment of them.

4 Q The interest on the loan was paid by the  
5 Clinton for Governor Committee?

6 A Yes, the account there. They would just  
7 transfer -- again, usually we wouldn't write a check,  
8 they would transfer the money usually and send me a  
9 statement that would show that they had transferred  
10 the money and it had gone to interest on the loan.

11 Q Did Mr. Ainley ever -- strike that.  
12 Did those loans ever become past due?

13 A Well, I don't know the answer to that. It  
14 could well be.

15 MR. COLE: I think you should distinguish a  
16 six-month demand note from a situation where the loan  
17 is due and extended, and there may be a time period  
18 after the due date before the formal extension and a  
19 loan, where a loan is seriously past due, and someone  
20 has a concern about repayment.

21 THE WITNESS: I'm not sure that we had a  
22 new note in hand on the due date of each time.

1 Interest continued to accrue, interest was paid.  
2 Ultimately there was an extension agreement or second  
3 note, but perhaps to be correct I was never told that  
4 we were in arrears or anything. It was simply a  
5 matter of we need to get a loan extension agreement,  
6 and I'm not sure we always had a line up on the last  
7 day the note was due.

8 Q Did you ever discuss with anyone at the  
9 bank whether regulators ever raised any questions  
10 about these loans to Governor and Mrs. Clinton?

11 A No, I had one vague memory at one point  
12 they wanted an updated financial statement. Maybe  
13 that was for a regulator, but I never heard concerns  
14 raised about the loans. They just didn't have an  
15 up-to-date financial statement, and this is, actually  
16 in the '92 campaign we gave them a new financial  
17 statement.

18 Q You have a recollection that at some point  
19 Mr. Ainley --

20 A Probably.

21 Q -- contacted you about the need for an  
22 updated financial report of Governor and Mrs. Clinton



1 in connection with these loans that had been taken  
2 out in the 1990 gubernatorial election?

3 A Right.

4 Q And do you recall him communicating that to  
5 you by telephone or by letter?

6 A Most likely by telephone.

7 Q You think it was during the '92 campaign?

8 A I think so, because I think we maybe sent  
9 them our federal financial form or something. I  
10 think we had sort of a form ready and available.  
11 not sure we used their format. I think we sent them,  
12 maybe the financial form we file with the federal  
13 government. I have some vague memory of that.

14 Q Do you recall when during the 1992  
15 presidential campaign this would have occurred?

16 A No. I think again it would be in the early  
17 part of '92. Seems to me it was around the same time  
18 that we were involved with David Ifshin and changing  
19 the loan, and at some point in there I have a sense  
20 that Neal, maybe he got inquiries from the press and  
21 everything, and in the process said, "By the way, you  
22 need to probably get us an updated financial

1 disclosure," and I think we did.

2 Q But you don't recall the Clintons  
3 submitting a financial statement on a form provided  
4 by the bank?

5 A No.

6 MR. SNYDER: These are the documents we  
7 produced to you.

8 THE WITNESS: I sent them personally to the  
9 Senator on May 8.

10 (Discussion off the record.)

11 THE WITNESS: I was thinking one of the  
12 times we had a loan extension agreement we filed an  
13 updated financial, but the one I thought it related  
14 to apparently it didn't. So there may have been that  
15 with one of the loan extension agreements they also  
16 sent us a financial and we submitted an updated  
17 financial on the form that they provided us sometime  
18 between '90 and '92.

19 BY MR. GIUFFRA:

20 Q You think you did submit one?

21 A I have a vague sense at one time when we  
22 did the loan extension we also sent them back an

1 updated financial.

2 Q On their form?

3 A I think so, but I thought it was the one  
4 that I had in my file that I gave you, but it  
5 wasn't. Just says the loan extension agreement.

6 Q Did you ever discuss with Mr. Ainley the  
7 need to obtain a waiver of the requirement of a  
8 financial statement?

9 A No, I don't think so.

10 Q I will show you a Bates number DKS N 207897  
11 through DKS N 27901, something produced by  
12 Mr. Kendall. Presumably it was in the Clinton  
13 files. This is a note handwritten to Mr. Lindsey  
14 from Neal Ainley, undated. I can read it for the  
15 record.

16 "Mr. Lindsey, enclosed please find a  
17 signature card, a funds availability form and a set  
18 of temporary checks. Also enclosed are two loan  
19 extension agreements. Interest on both is listed at  
20 the top right-hand corner of the instrument. Those  
21 amounts will be paid out of the checking account and  
22 \$35,000 was transferred to establish the new

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1 account. Please have the Clintons sign where  
2 indicated and return all documents with the exception  
3 of the checks and the account tickets. We will also  
4 have to get updated financial information, including  
5 a financial statement and 1990 tax returns, if  
6 available. If you have any questions or need  
7 additional information, just let me know. Thanks,  
8 Ainley. PS, the Clintons' checks will be mailed to  
9 their address."

10 A This may have been the loan extension  
11 agreement. I had some vague memory that they sent  
12 along an extension and an additional request for a  
13 financial statement.

14 Q This would have been after the '90  
15 campaign?

16 A This would have been around May of '91,  
17 April or May of '91. I'm assuming that from the  
18 "signature card, funds availability form and a set  
19 of temporary checks." I think that was in connection  
20 with a \$35,000 account that we established under  
21 Arkansas law, and so I think that established in  
22 April, I think the fund actually, separate fund was

1 set up in April of '91. So this would have been  
2 around that time.

3 Q Could you please just describe for the  
4 record the circumstances surrounding the creation of  
5 this \$35,000 special account?

6 A Yes. In the olden days in Arkansas many  
7 candidates raised money all the time and used it for  
8 all sorts of personal purposes. There were no laws  
9 that restricted them from doing that, so candidates  
10 who didn't have opponents, for example, would have  
11 large fundraisers and raise a lot of money and then  
12 use that money for, sometimes for living expenses,  
13 sometimes for other things. It would be income to  
14 you if you used it for personal, but it was still a  
15 supplemental income.

16 In the 1990 election they changed the law.  
17 It was by a vote of the people. The people in the  
18 November 1990 election changed our campaign financing  
19 law, one, to say that, to lower the amount from  
20 \$1,500 down to \$1,000 and two, to provide that excess  
21 campaign money, that was money over and above any  
22 money necessary to pay any outstanding loans or any

1 outstanding debts, had to be either reimbursed on a  
2 pro rata basis to the contributors, given to the  
3 state treasurer, or given to a political party,  
4 except that a candidate could maintain a fund equal  
5 to one year's salary.

6 That fund was to be used for I guess  
7 whatever purposes, I don't think the statute says,  
8 but that fund basically could be used for any  
9 purposes. If it was used for personal purposes, of  
10 course, it would become income and you have to report  
11 it as income, but if you used it for campaign-related  
12 purposes it would not be income to the candidate.

13 So after the '90 campaign -- there was a  
14 question in the '90 campaign as to whether or not  
15 that particular portion of the law applied, and I  
16 guess whether it applied to the '90 campaign or  
17 whether it took effect after the '90 campaign, and  
18 whether people who had excess contributions from the  
19 '90 campaign could continue to use them for any  
20 purposes or whether or not they would have to rebate  
21 them to either the contributors or the state or  
22 political party except for this fund.

1 That question was resolved sometime in the  
2 Spring of '91 by, I believe the Attorney General, who  
3 issued an Attorney General's opinion. After that  
4 opinion, in order to make it clear that we were  
5 setting aside a fund for the \$35,000, we transferred  
6 \$35,000 to a separate account. So we created a  
7 separate \$35,000 account.

8 MR. COLE: \$35,000 being the Governor's  
9 salary?

10 THE WITNESS: One year salary for the  
11 Governor of the state of Arkansas.

12 MR. COLE: And this law applied to all  
13 elected officials in Arkansas?

14 THE WITNESS: That's correct. Whatever  
15 your yearly salary, you could set up an amount equal  
16 to that and use it to offset expenses. That fund was  
17 set up sometime, the separate fund was set up  
18 sometime in the Spring of '91. I believe the  
19 reference here to signature cards, funds available  
20 form and set of temporary checks would have to refer  
21 to checks related to that account. It turned out  
22 they originally wrote the account in the name of Bill

1 Clinton and Hillary Clinton, which it can't be,  
2 because if it's in their name, it becomes their  
3 personal funds. It later was written with a name  
4 called the "Bill Clinton account" and the signatories  
5 were Gloria Cabe and me, which clearly indicated that  
6 unless they used it for personal purposes or  
7 transferred it for personal purposes the money would  
8 not be personal income to them. So we had to send  
9 the forms back and checks back and have them  
10 reissued, but all that occurred in April and May of  
11 1991. Anything else you want to know about the  
12 \$35,000 account?

13 BY MR. GIUFFRA:

14 Q Just a couple more things. Did you discuss  
15 the setting up of this account with either Governor  
16 Clinton or Mrs. Clinton?

17 A I'm sure I advised at least the Governor,  
18 probably, I didn't tend to talk on a daily or regular  
19 basis with Mrs. Clinton. I'm sure I advised the  
20 Governor that we were going to set up the account and  
21 transfer the money.

22 Q Did you discuss with Mr. Branscom the



1 setting up of this account?

2 A Either Branscom or Ainley, yes.

3 Q Do you recall anything about the  
4 discussions you had with either Branscom or Ainley  
5 about the setting up of this special account?

6 A I think I told them under the law we were  
7 entitled to set it up and we wanted to set up \$35,000  
8 to that account and set up a separate account.

9 Q Do you know for what, do you know how this  
10 account -- strike that.

11 Do you know if it was the loan proceeds  
12 that were used to fund this account?

13 A No. I don't believe they were. You know,  
14 money is fungible. I have had this discussion. We  
15 always had money. There was never a point in this  
16 campaign that the campaign didn't have campaign  
17 contributions in money. We never ran a negative  
18 balance. We always probably had anywhere from \$50-  
19 to \$100,000 in our account, which we were still  
20 obligating ourselves for amounts in excess of that,  
21 so we were borrowing money, but once there were loan  
22 proceeds in our account I can't tell you whether loan

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1 proceeds or non-loan proceeds went to pay any  
2 particular bill, because money is money, but we had  
3 \$35,000 in our account on election day that would  
4 have been non-loan money.

5 MR. COLE: That was the same account at  
6 Perry County Bank that the loan proceeds from the  
7 various personal loans would have been deposited to.

8 THE WITNESS: Yes. Now we, at one time we  
9 violated basically our own rule in terms of not  
10 dealing with a Little Rock bank. At the end of  
11 the -- this is much more than you will ever want to  
12 know about Arkansas law. At the end of the 1990  
13 campaign it was clear to us that this new law was  
14 going to pass. It was also clear to us that at least  
15 portions of it possibly took effect on the date of  
16 the election, including the change from \$1,500 to  
17 \$1,000.

18 In order to avoid any possibility that  
19 funds that were mailed to the Perry County Bank and  
20 arrived at the Perry County Bank two or three days  
21 after the election, to avoid any possibility that  
22 those funds would be viewed as post-election funds

1 and not pre-election funds, we opened up like on the  
2 weekend or the Friday before the election an account  
3 at a Little Rock bank, and on Friday, Saturday,  
4 Monday and Tuesday, we delivered all of our  
5 contributions the same day we got them to the bank so  
6 that it was absolutely clear that they were deposited  
7 while we could still accept \$1,500 and not \$1,000.

8 MR. COLE: So you would have a record from  
9 the bank that the deposits took place the day before  
10 the election?

11 THE WITNESS: That's correct, and we  
12 ultimately took the money in those accounts and wrote  
13 a big check to the Perry County Bank, but we wanted  
14 there to be, didn't want it to be a question as to  
15 whether or not the check came in Wednesday or Tuesday  
16 if it was for \$1,500 and therefore it was \$500 over  
17 the limit or whatever. We wanted to be absolutely  
18 clear as to the date we received the check. So the  
19 only, we had, the only time we sort of violated our  
20 own rule about not using a Little Rock bank was when  
21 it became absolutely critical in our opinion to make  
22 sure that we could establish the date the checks were

1 deposited, arrived and were deposited.

2 BY MR. GIUFFRA:

3 Q Do you know, though, what this \$35,000 that  
4 was in the special account was used for?

5 A Yes, most of it is still there. \$29,000 of  
6 it is still there. I know exactly what the rest was  
7 used for.

8 Q What?

9 MR. COLE: And if it wasn't used to repay  
10 the Perry County Bank loans, I don't think it's  
11 within the scope of the Resolution.

12 MR. GIUFFRA: The \$35,000 was the proceeds  
13 from a loan.

14 MR. COLE: You haven't established that.  
15 In fact you established money is fungible and there  
16 were adequate funds in the account at all times such  
17 that it would not necessarily have come from the  
18 loans.

19 THE WITNESS: It paid for polling, it  
20 paid -- you are absolutely right, but it paid for  
21 some travel for some people who went with the  
22 Governor to various conferences where, for whatever

1 reason, it was not felt like the State should pay for  
2 their travel. It paid for a poll one time during the  
3 1991 legislative session that the Governor wanted.  
4 Like I say it's started out at \$35,000 and it's still  
5 at over \$29,000, so we have spent less than \$6,000  
6 out of it.

7 MR. COLE: I think that general response  
8 should be adequate for our purposes.

9 BY MR. GIUFFRA:

10 Q Let me show you another document. This  
11 bears Bates number --

12 A I'm no longer a signatory on that.

13 Q I can't imagine why. Bates number 200076.  
14 This is a document dated July 31, 1991, from Neal  
15 Ainley, President, CEO, Perry County Bank. It says,  
16 "Real estate, Bill Clinton, The Board of Governors  
17 of the Perry County Bank as of this date has waived  
18 the requirement of financial statement/income report  
19 on the above-mentioned customer, Bill and Hillary  
20 Clinton."

21 Do you know, did you have any discussion  
22 with anyone at the Perry County Bank about obtaining

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1 a waiver of the requirement of a financial statement/  
2 income report for Bill and Hillary Clinton's loans?

3 A Not that I recall. I don't recall much  
4 more than that note that you showed me earlier about  
5 the Clintons.

6 Q Did you have any discussions with Governor  
7 Clinton after the '90 campaign about the repayment of  
8 the Perry County Bank debt?

9 A I'm sure I did. I'm sure in '92 when we  
10 decided to seek funds from people that had been  
11 contributors for the '92 presidential campaign that  
12 were mostly from Arkansas, who therefore would have  
13 been contributors to the '90 campaign, I'm sure I  
14 told him that is what we were doing, that we had,  
15 sort of, had a plan to do it.

16 Q Did he express to you any concern about the  
17 fact that these loans were still outstanding?

18 A Not that I recall.

19 Q Do you know how much was outstanding as of  
20 July 1991?

21 A I think \$100,000. I think throughout this  
22 entire period there was \$100,000 outstanding, up

1 until October of '92.

2 Q Was it \$130,000 or just \$100,000?

3 A I think at some point it was at \$130,000.

4 I think by July of 1991 it was down. I don't know.

5 May have been. I may have paid off a loan in October  
6 of '91.

7 Q October of '91 you paid off \$30,000?

8 A That's right. I had forgotten. That's

9 correct. I paid off \$30,000, so apparently in July

10 it was \$130,000. I paid off, about the time we

11 started the campaign, I paid off \$30,000. Again we

12 had, you could almost look at our bank statement any

13 month during that period and we would have had

14 \$40,000, \$50,000 in the bank, which we could have

15 used to pay down the loan.

16 MR. COLE: So I'm clear on that, is that in

17 addition to the \$35,000 in this segregated account?

18 THE WITNESS: I think so. Again I don't

19 quite remember, but I think once we transferred the

20 \$35,000, we still were running \$35,000, \$40,000,

21 maybe even more in that account. I was using that

22 mostly to pay interest on the loans when it came due,

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1 and then at some point we made the decision to apply

2 \$30,000, so I'm not sure, again I'm anticipating, I

3 don't think there was any fundraising in connection

4 with paying off that \$30,000. I think that was

5 simply us transferring money out of the account.

6 BY MR. GIUFFRA:

7 Q Okay. So on or about October 3, 1991 you

8 paid \$30,000 that was outstanding on the loan that

9 was a total of \$80,000 to the Perry County Bank?

10 A Sounds reasonable.

11 Q And in order to pay off that loan you used

12 money that was already in the campaign?

13 A In the account, yes.

14 Q So you didn't have to engage in any

15 fundraising activities to pay off that loan?

16 A No.

17 Q Do you recall filing -- strike that. In

18 terms of repaying these Perry County Bank loans in

19 1991/1992, was there a need to file a report with the

20 state of Arkansas?

21 MR. COLE: In connection with the repayment

22 of the loan?



1 BY MR. GIUFFRA:

2 Q Yes.

3 A Probably. They changed the report, so I  
4 think that if you had an expenditure, I think it's  
5 arguable that a payment of a loan is an expenditure.  
6 I'm not sure at the time if I thought of it as such.  
7 It was our money, our loan.

8 Q So if you didn't pay it off, if you didn't  
9 report to the state of Arkansas the payment of this  
10 \$30,000 loan, it would have been because of  
11 inadvertence and not knowing that that would be an  
12 expenditure that had to be reported?

13 A "Not knowing" I'm not sure is the right  
14 word. Not thinking about it. I did not think about  
15 that being, at the time, you know, we just took money  
16 and transferred it from one account to a loan  
17 payment. I didn't have a real sense that that was an  
18 expenditure. There is probably no document. I  
19 didn't have a canceled check. I assume we did it  
20 again just on the books of our account.

21 MR. COLE: The assets technically would  
22 have been reduced by \$30,000 and the liabilities

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1 would have a corresponding \$30,000 reduction, so  
2 there would be no net effect on the net worth?

3 THE WITNESS: Right.

4 MR. COLE: Or net cash position of the  
5 campaign?

6 THE WITNESS: Right. And again there are  
7 various reports. I filed one report on the wrong  
8 form. There was another -- because they didn't have  
9 the new forms. I went through all that with  
10 Mr. Snyder. At one time I sort of went through and  
11 figured out who, what I had done right or wrong, but  
12 there was, there is an argument that when we didn't,  
13 when we paid down the loan I should have filed a  
14 report at the end of that quarter. I was in the  
15 middle of a campaign in that quarter and I frankly  
16 didn't think about it.

17 MR. GIUFFRA: Off the record.

18 (Discussion off the record.)

19 BY MR. GIUFFRA:

20 Q Did you have any discussions with Governor  
21 Clinton about his federal election campaign filing  
22 prior to the time that he declared for President in

1 October 1991?

2 A I'm not quite sure what that means. We  
3 filed an Exploratory Committee in August of '91, and  
4 I'm violating my own rule, I was the treasurer of the  
5 Exploratory Committee, and I was originally the  
6 treasurer of the Committee when we formed the  
7 Committee in October of '91, when we finally got Bob  
8 Farmer or somebody in there and made him assistant  
9 treasurer, but we did file an Exploratory Committee  
10 with the FEC in August of 1991, which is  
11 required once you begin that process.

12 Q Did you have any discussions with Governor  
13 Clinton at any time, say 1991, about the FEC, Federal  
14 Election Commission, disclosure form that would have  
15 to be filed by them disclosing his assets and  
16 liabilities?

17 A I don't recall if I did. David Ifshin I  
18 think was our counsel then. I think he may have said  
19 that to the Clintons and then sent it to the FEC, but  
20 I may have seen it in the process. I don't have a  
21 recollection of having a discussion with the  
22 President about it.

1 Q Did you have discussion with anyone else --  
2 strike that. Did you have discussion with anyone  
3 associated with the presidential campaign about this  
4 FEC form prior to the time it was submitted in  
5 November, 1991?

6 A Again, I may have seen the form. I may  
7 have been involved with getting the Clintons to sign  
8 the form. I don't recall, but it's certainly  
9 possible. I didn't fill out the form.

10 Q Did you have any discussion with, for  
11 example, Mr. Ifshin about this form?

12 A Again, it's possible. It would have been  
13 more of a procedural deal. You need, here is the  
14 form, you need to get them to sign it, you need to  
15 send it back to me, you need to send it to the FEC.  
16 Again I could have had any of those conversations. I  
17 just don't recall. The first time I remember talking  
18 about that particular form is in December, January,  
19 when the issue of the loans came up.

20 Q So your testimony is you have no  
21 recollection of any conversation with anyone about  
22 the FEC form that the Clintons filed in November,

1 1991?

2 A No specific recollection, though it's  
3 possible that I was --

4 Q Do you have a general recollection that you  
5 might have discussed that form with them?

6 A I didn't discuss the form. I may have been  
7 in the chain of custody in the process of getting the  
8 form filed. I just don't know. I signed a lot of  
9 letters to the FEC. I don't want to say that I  
10 didn't have anything to do with it and you have a  
11 letter, which you could well have, from me to the FEC  
12 saying enclosed is a copy of presidential candidate  
13 Bill Clinton's financial disclosure. I could have  
14 done that. I could have signed it. I just don't  
15 recall. I don't have any, I don't know enough. I  
16 didn't know anything, frankly, about the Clinton's  
17 assets. So I couldn't have been involved in filling  
18 out the form, because I wouldn't have had the first  
19 bit of knowledge as to what should go on it. Whether  
20 once the form was filled out I had something to do  
21 with, making sure he signed it and then sending it  
22 on, I just can't tell you.

1 Q You don't recall ever having any  
2 discussions, being part of any discussions with  
3 anyone prior to December, 1991 about whether the  
4 Perry County Bank loans should be listed on that FEC  
5 formed filed by the Clintons?

6 A No, I don't recall any discussions about  
7 it. I didn't think about it.

8 Q Are you aware of any discussions within the  
9 campaign that you might not have been a party to at  
10 which there was discussion about whether the Perry  
11 County Bank loans should be disclosed in the FEC form  
12 filed in November of 1991?

13 A There may have been some discussion in  
14 January when we were trying to decide whether or not  
15 to amend the form as to whether or not it was a  
16 mistake not to file, list it. I don't think, I don't  
17 believe there was any discussion. I don't think  
18 anybody even thought about the Perry County Bank  
19 loans until this issue came up I think with an  
20 extension agreement, and Mrs. Clinton said that that  
21 should have been on our federal form. Whether we had  
22 at that point a discussion about, since for the

1 primary repayment of the loan we would look to the  
2 campaign to repay the loan, whether it really was a  
3 personal loan or whether that was a matter that was  
4 personal as opposed to a guarantor, because of the  
5 nature of Arkansas campaign law or not, therefore it  
6 may not be actually a debt of the Clintons, there  
7 could have been that discussion. That discussion  
8 would have been in December or January, would not  
9 have been before we initially filed it, because  
10 nobody even thought about it when we initially filed  
11 it.

12 Q Did you ever have any discussions with --  
13 strike that. Do you know Yoly, Y-o-l-y, Redden,  
14 R-e-d-d-e-n?

15 A I may have met her. I don't know her. I  
16 know she was the Clinton accountant and maybe for a  
17 number of years. I don't know if she still is or  
18 not, but I don't know if I have ever met her.

19 Q Did you ever have any discussions with Ms.  
20 Redden about the Clintons FEC disclosure form?

21 A I don't recall ever having a conversation  
22 with Ms. Ridden, period.

1 Q Do you know Mr. Kurt Bradbury?

2 A Yes.

3 Q Who is he?

4 A He was the President of Worthen Bank and  
5 Trust Company.

6 Q Do you have any understanding as to whether  
7 Governor Clinton contacted Mr. Bradbury after the '92  
8 campaign seeking his assistance with regard to paying  
9 off the loans that were outstanding at the Perry  
10 County Bank?

11 A He contacted them after the '90 campaign,  
12 not after the '92 campaign.

13 Q I apologize.

14 A Yes, we paid down the loan significantly in  
15 December of '90. We did a significant amount of  
16 fundraising between the end of the election and the  
17 30-day post election report. Another thing in this  
18 same law that I'm telling you about says you couldn't  
19 raise money from, I think it was 30 days before a  
20 legislative session until 30 days after a legislative  
21 session, so there was some period in the middle of  
22 December when the Governor, Lieutenant Governor and



1 members of the legislature were restricted from  
2 raising money. So from the period of the election in  
3 early November until whatever that deadline was, we  
4 tried to raise as much money as we possibly could to  
5 pay down these loans. So yes, I believe that Kurt  
6 Bradbury among others helped to raise money to pay  
7 down the loans.

8 Q Did you participate, did you discuss the  
9 paying off of these loans with Mr. Bradbury?

10 A No.

11 Q Do you have an understanding, though, that  
12 Mr. Bradbury and the Governor spoke about raising  
13 money to retire these loans?

14 A I don't know if they spoke personally. I  
15 know Kurt Bradbury is one of the many people who were  
16 asked to try to raise as much money as they could.  
17 Again whether the Governor spoke directly to him or  
18 not, I wrote a fundraising letter at one time I think  
19 to some of them, not for my signature but for the  
20 Governor's signature, but I wrote the letter.

21 Q These loans at the Perry County Bank, who  
22 was responsible for the repayment?

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1 A The Governor and the First Lady.

2 Q I will show you a document, DKSJ 25321, a  
3 letter from David Ifshin to Kim Bright Coleman,  
4 Office of General Counsel, Federal Election  
5 Commission, amended form for presidential candidate  
6 William J. Clinton.

7 A This is the amended form we filed to  
8 reflect the two notes.

9 Q Did you play any role in terms of the  
10 drafting of this letter to the Federal Election  
11 Commission?

12 A I don't believe so.

13 Q You would agree the letter is incorrect, it  
14 states that the Committee is responsible for the  
15 repayment?

16 A No, I think that is -- well.

17 MR. COLE: Calls for a legal opinion.

18 THE WITNESS: This goes to the same issue I  
19 was talking about earlier. Everybody knew that the  
20 loans were taken in the Clinton's name but that the  
21 money went to the campaign and that the campaign  
22 would try to raise the money to pay the loans off.

1 MR. COLE: The purpose of the loans was for  
2 campaign expenses. It was contemplated that the  
3 loans would be repaid through political fundraising  
4 and what the letter states is consistent with that?

5 THE WITNESS: That's correct. The money  
6 was distributed directly into the campaign account,  
7 did not go to the Clintons, it was not used for any  
8 personal purposes. I think that was simply a way to  
9 explain that while the Clintons had these debts, they  
10 were campaign-related debts, not personally-related  
11 debts.

12 BY MR. GIUFFRA:

13 Q You would agree that if the campaign did  
14 not raise the money to pay off the debt, the Clintons  
15 were liable?

16 A Absolutely, and I think that is why they  
17 are listed on the form.

18 MR. SNYDER: I would also note the letter  
19 says the Clintons were the borrowers, which to me  
20 means they are legally responsible for the loan.

21 THE WITNESS: Again --

22 MR. GIUFFRA: The letter says, "The

1 amendment reports two bank loans that were omitted  
2 from the original filing. Although Governor and  
3 Mrs. Clinton were the borrowers, the lending  
4 institution disbursed the proceeds directly to  
5 Governor Clinton's 1990 gubernatorial campaign  
6 Committee and the Committee is responsible for their  
7 repayment."

8 THE WITNESS: Again I think that is as much  
9 a press statement so the people will understand the  
10 nature of what these loans are and so that you would  
11 explain it on the front end and not have to answer 47  
12 questions as to what kind of loans these were, what  
13 were they used for, all of that. I think simply it's  
14 a matter of anticipating what we thought the  
15 questions would be.

16 BY MR. GIUFFRA:

17 Q Did you have any discussions with  
18 Mr. Gerth -- strike that. Were you any aware of  
19 inquiries during the '92 presidential campaign by  
20 Mr. Gerth about these loans?

21 A About the loans?

22 Q Yes.

1 A Maybe. I remember somebody was writing a  
2 story. I don't know that I remember it was  
3 Mr. Gerth.

4 Q Did you participate in preparing a response  
5 to the press inquiries?

6 A I was certainly involved in discussions  
7 about it. I don't think I ever spoke to Mr. Gerth  
8 about it, but I certainly was involved. I knew more  
9 about the loans than anybody else, so I certainly was  
10 involved in it.

11 Q The actual documents for the loans, did you  
12 have possession of them or did the Clintons?

13 MR. COLE: Which documents you mean "the  
14 loan agreements"?

15 BY MR. GIUFFRA:

16 Q We can break it out if they had copies of  
17 some of the documents and you had copies of other  
18 documents.

19 A I at one time had a lot of the loan  
20 agreements or extensions or copies. I guess the bank  
21 had the originals. I don't know whether the Clintons  
22 kept copies as well or not.

1 MR. COLE: Do you know whether the Clintons  
2 even were informed on a regular basis of the amount  
3 outstanding of the loans and the uses of the campaign  
4 proceeds to repay the loans.

5 THE WITNESS: I'm sorry, repeat --

6 MR. COLE: Do you know whether the Clintons  
7 were kept apprised on a regular basis of every  
8 transaction involving the loans and the loan.  
9 balances?

10 A Well, if they were asked to sign an  
11 extension agreement, they would have signed the  
12 extension agreement. I never talked to them about  
13 whether I authorized them to take money out of our  
14 account to pay the interest. I just did that, so I  
15 would tell them, "Pay the interest, send us an  
16 extension agreement and we will sign the extension  
17 agreement for the principal." Now again I would get  
18 their signatures on it, but they might not have even  
19 thought about, what about the interest and all that.

20 MR. COLE: Consistent with treating them as  
21 a campaign obligation rather than as a personal  
22 obligation?

1 THE WITNESS: Right.

2 BY MR. GIUFFRA:

3 Q So you were the one who kept the loan  
4 agreement documents?

5 A I think so.

6 Q So they didn't have copies of the loan  
7 agreements?

8 A I don't know. We would send them, as that  
9 note reflects, ask them to sign it and ask them to  
10 return it to me and I would send it back to the  
11 bank. Whether or not they were in their possession,  
12 they made copies, I don't have knowledge. I got back  
13 the originals. I think I kept a copy and I would  
14 send it back, but I have no knowledge whether they  
15 did.

16 Q Did you have any discussion with  
17 Mrs. Clinton about these loans?

18 A I don't think so.

19 Q Let me show you another document which  
20 bears Bates number DKSJN 30634. It's a memo from  
21 Gloria to the Governor dated 12/26, subject  
22 finances. "Gloria" presumably is Gloria Cabe?

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1 A I assume this should be 1990.

2 Q After the election. Do you recall getting  
3 a copy of this memo?

4 A Possibly. I don't remember.

5 Q Have you ever seen it before?

6 A I don't know the answer to that. I just  
7 don't know. I don't recall. We didn't do this.

8 Q Didn't do what?

9 A We didn't pay -- this reflects that we had  
10 a balance of \$77,000 in the account, and she  
11 recommended we pay \$65,000 down on the loan. You  
12 reflected a document that showed that as of October  
13 we still had \$130,000 bank debt, so we certainly  
14 didn't pay down these loans to \$73,000 in December of  
15 '90, if we still had \$130,000 debt as of October of  
16 '91.

17 Q Okay. There is an asterisk. I will just  
18 read it. "Since the world is only aware of the  
19 general election debt, it will appear you have only  
20 about a \$45,000 debt, (depending on how we have to  
21 allocate the money raised since November 6 between  
22 the general and primarily elections). We can discuss



1 all this later." Do you know what she means by the  
2 reference to, "since the world is only aware of a  
3 general election debt, it will appear you have only  
4 about a \$45,000 debt."

5 A Well, I think what she's saying is  
6 apparently when we filed our report in June, it  
7 didn't draw much attention.

8 MR. COLE: Your state financial --

9 THE WITNESS: State financial disclosure.  
10 When we filed the report in December, because of this  
11 flurry of campaign spending that we had done right  
12 before the general, I think the debt that we  
13 reflected on our post-30-days report got a lot of  
14 attention. I think what she's saying is that if you  
15 apply the \$65,000, she may be wrong on the math, but  
16 if you apply the \$65,000 to the debt, if there is  
17 only \$100,000 debt, the number should be \$35,000 not  
18 \$45,000, but that would be all the world would pay  
19 any attention to. So that you could apply all 65,  
20 not allocate any of it back to the primary debt, but  
21 allocate it all to the general election debt and you  
22 would file a report that would show that you only had

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1 a \$35,000 remaining debt, even though you still had a  
2 \$30,000 primary debt, that that was sort of lost in  
3 people's consciousness. Now I think that is what all  
4 that does. But it says, "depending on how we have to  
5 allocate the money raised since November 6."

6 Now there was a question about, we did  
7 raise money from people after, after November 6 from  
8 people who had maxed out for the general but had not  
9 maxed out for the primary, and it was, in order to  
10 comply with the law we would have had to allocate  
11 those contributions to the primary debt, not to the  
12 general election debt. So I think that was that  
13 reference to how we allocate money after November 6,  
14 that we would have to decide, allocate portions.  
15 Under the law we could only allocate a portion of  
16 it. We would have to allocate a portion of the  
17 primary debt. Our people would in effect have given  
18 too much money to the general election.

19 MR. COLE: This testimony is a good  
20 advertisement for campaign finance reform.

21 MR. GIUFFRÀ: It's a good time for not  
22 being treasurer of a campaign.

1 THE WITNESS: I think that note down there  
2 reflects that the public was also conscious of paying  
3 attention to our general election date.

4 BY MR. GIUFFRA:

5 Q That is because there was not media  
6 attention to the debt run up in the primary?

7 A Right. Didn't have the same impact. One  
8 thing that caused the impact in the general election  
9 was the change in the law. The second thing was  
10 everybody knew, because Bill Clinton went around and  
11 talked about it, how he had to borrow a lot of money  
12 at the end in order to counter the Sheffield Nelson  
13 ads, and therefore there was a lot of attention sort  
14 of paid to his general election debt, but I do think  
15 her math is wrong.

16 Q I will show you another document,  
17 DKSJ 30633. This is a memo to the Governor from  
18 Gloria, subject campaign finance report. It says  
19 "Bruce" across the top.

20 A "Will remain and will probably continue to  
21 go unnoticed."

22 MR. COLE: Naive assumption.

1 BY MR. GIUFFRA:

2 Q That is a reference to the primary debt?

3 A Goes back to your other document where she  
4 says the world is only familiar with the general  
5 debt, goes along with that.

6 Q Do you recall receiving the memo?

7 A No.

8 Q Do you recall discussing it with the  
9 Governor?

10 A No. I mean it could well have been, I just  
11 don't have any memory of it.

12 Q Do you recall Governor Clinton after the  
13 '90 campaign being concerned about the size of the  
14 debt and the fact that he was personally liable on  
15 the debt?

16 A Yes. I'm not sure he ever focused on the  
17 personal liability, but I think he wanted us to do  
18 our best to pay it off, and we did. I would say the  
19 mere fact that Gloria is writing memos to him about  
20 it reflects some degree of interest on his part.

21 Q After the election in November, did you  
22 have any conversations with --

1 A November what year?

2 Q '90, with Herbie Branscom about the debt  
3 owed by Governor and Mrs. Clinton to the Perry County  
4 Bank?

5 A I don't believe so.

6 Q Then previous to the election your  
7 testimony is you don't recall discussing the other  
8 loans with Mr. Branscom?

9 A No, I think I testified I totally discussed  
10 the last \$50,000 loan with Mr. Branscom. I may have  
11 discussed other loans. I may have called him up and  
12 said we need to borrow more money. Gloria may have  
13 called him up and said we need to borrow more money.  
14 All of it was done in the ordinary course of  
15 business.

16 MR. COLE: We covered this.

17 BY MR. GIUFFRA:

18 Q Did he ever indicate to you a concern about  
19 the amount of money that the Governor and  
20 Mrs. Clinton were borrowing?

21 A No.

22 Q Did he ever indicate any concern to you

1 about the fact these loans were unsecured?

2 A No.

3 Q Let me show you a memo, DKS 30324, a memo  
4 to NA/FL, date 12/11/90 re: Bruce Lindsey. Has your  
5 telephone number and requests an appointment for Rob  
6 Hill and Kent Dollar. Do you recall having any  
7 discussions after the election in 1990 with Rob Hill  
8 about a debt retirement?

9 A Other than he told me he wanted to give the  
10 Governor money. Other than what is reflected in  
11 here, no.

12 Q Did you, what was the nature of your  
13 relationship Rob Hill?

14 A He was a member of the Board of Directors  
15 of the First Electric Cooperative Corporation, which  
16 is a Rural Electric Distribution Co-op. I was  
17 general counsel to the Co-op and therefore he was a  
18 member of the board of which I was general counsel,  
19 so I would have, they would have once a month board  
20 meetings which I would attend and I would see him at  
21 these board meetings.

22 Q When did you first become general counsel

1 of this cooperative?

2 A I want to say, well, I started off doing  
3 labor work for the Co-op. They would have had maybe  
4 an employment discrimination lawsuit of some sort and  
5 their general counsel, who was an older gentleman,  
6 didn't do labor work, so they hired me to do their  
7 labor work. That would probably have been maybe '88,  
8 maybe. He later retired, the general counsel, and  
9 they asked me to be general counsel. I would think  
10 that would probably have been '89, and I became  
11 general counsel and I served as general counsel until  
12 I left the law firm.

13 Q Was the Cooperative a client of your law  
14 firm?

15 A Yes. All clients are clients of my law  
16 firm. That was the nature of our relationship.

17 Q Did you receive additional compensation  
18 from the Co-op for serving as general counsel?

19 A No, they paid our firm a retainer and I got  
20 no additional benefits. Well, I was on their health  
21 insurance plan, not my firm's. It was a better  
22 plan.

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1 MR. COLE: Off the record.

2 (Discussion off the record.)

3 THE WITNESS: They are also still a client  
4 of my firm and a lawyer in my firm continues to be  
5 basically the general counsel to them.

6 BY MR. GIUFFRA:

7 Q So when did you first meet Rob Hill?

8 A At one of the Co-op meetings.

9 Q This would have been sometime in '88  
10 probably?

11 A '89 probably. I don't think I had any  
12 direct dealings with the board in '88 when I did  
13 their labor work.

14 Q So as of 12/90 he was not someone who was a  
15 close friend of yours?

16 A No, I would spend one morning a month with  
17 him. The electric co-ops have various meetings  
18 around the country and they take their lawyers, which  
19 is nice. They also often take their wives, and so  
20 when we would go to an Electric Co-op meeting it  
21 usually was a national one. There was one in D.C., I  
22 think maybe two a year. This particular Co-op would



1 eat dinner almost every night together, all of them,  
2 including me, so twice a year I would go to one of  
3 their national meetings or their regional meetings  
4 and I would be with him, his wife, and eight or nine  
5 other Co-op people and their wives or husbands, but  
6 other than that, my association with them was once a  
7 month, fourth Thursday of every month.

8 Q And do you have a recollection that  
9 sometime in December of 1990 you spoke to Mr. Hill  
10 about making a contribution to Governor Clinton's  
11 debt retirement effort?

12 A No, I think what happened is he came up to  
13 me at a meeting and said that he wanted to give the  
14 Governor a contribution and he wanted to put in a  
15 good word for Herbie and could I help get him a  
16 meeting. I went back and called the Governor's  
17 office and I said, he must have told me that Kent  
18 Dollar wanted to come with him, because it's  
19 reflected in the note. I didn't remember that, but  
20 it's reflected in the note.

21 Q Did you know Kent Dollar at this point?

22 A I don't think so.

1 Q Do you know who Kent Dollar is as you sit  
2 here?

3 A You asked me that earlier. I think he is a  
4 businessman in Russellville, but beyond that I don't  
5 know.

6 Q Do you recall anything more about the  
7 conversation had with Rob Hill?

8 A No, I don't think it was much more than  
9 that. "Can you help me get an appointment," and I  
10 called and got it and called him back and said you  
11 have an appointment.

12 Q Did Rob Hill indicate to you that he was  
13 aware that Governor Clinton had a debt outstanding  
14 with the Perry County Bank following the '90  
15 election?

16 A Again I don't believe he would have had to  
17 say he was aware of that. It was all over the news.  
18 This was all over the newspapers around this time,  
19 what Bill Clinton did at the end of the campaign to  
20 raise money, and he would go around and say that he  
21 had to go out and borrow money in order to respond to  
22 these outrageous charges. So it was well known and

1 clear to everyone. I don't remember him saying it in  
2 any way other than saying basically, I have some  
3 checks I want to take to the Governor for his  
4 campaign and I also would like to put in a good word  
5 for Herbie, can you help me set up an appointment.

6 Q It's your specific recollection he said  
7 "checks to give to the Governor"?

8 A I think so.

9 Q Did he say had had \$5- to \$6,000, you  
10 assume it's checks?

11 A Again, I don't have any recollection one  
12 way or the other, so I wasn't allowed to take cash,  
13 so --

14 MR. COLE: This is when he asked you to  
15 help, for help getting an appointment, he indicated  
16 he had checks?

17 THE WITNESS: Right.

18 BY MR. GIUFFRA:

19 Q And with regard to Mr. Branscom, he said he  
20 wanted to put in a word for Mr. Branscom to be  
21 appointed to the Highway Commission?

22 A Right. I think it was pretty well known

1 that Herbie was interested in being on the Highway  
2 Commission.

3 Q Why was that?

4 A The Highway Commission is one of the best  
5 appointments in Arkansas, and when there is a  
6 vacancy -- there's only, I think, five members of  
7 the Highway Commission. When those vacancies come up  
8 usually there are press stories and others about who  
9 is under consideration and interested.

10 MR. COLE: These are 10-year appointments?

11 THE WITNESS: Yes, every two years, I  
12 think. It's sort of a complicated deal about how,  
13 it's old congressional districts, so you have to sort  
14 of get out old maps of Arkansas to figure out where  
15 the various districts. One commissioner has to come  
16 from each district, but they are not current  
17 districts, they are highway districts, they are old  
18 congressional districts.

19 BY MR. GIUFFRA:

20 Q Did Mr. Branscom ever discuss with you his  
21 interest in becoming a member of the Highway  
22 Commission?

1 A He may have. Again I think I knew Herbie  
2 was interested in being on the Highway Commission. I  
3 don't recall him ever telling me that, but I just  
4 knew that.

5 Q Do you know how you knew that he was  
6 interested in becoming a member of the Highway  
7 Commission?

8 A I think it was just generally known who was  
9 interested. Rocky Willmuth was interested in being  
10 on the Highway Commission.

11 Q But do you recall any conversations with  
12 Mr. --

13 A No.

14 Q -- Branscom during the '90 campaign in  
15 which he said he was interested in being appointed to  
16 the Highway Commission?

17 A No, I don't remember any conversation with  
18 Mr. Branscom in which he said he was interested in  
19 being on the Highway Commission.

20 Q Do you know of any other -- strike that.

21 Would it be fair to say the Highway  
22 Commission is considered probably the most desirable

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1 commission for someone to be appointed to in  
2 Arkansas?

3 A No. Depends on what your interest is. The  
4 University of Arkansas Board of Trustees to many  
5 people is a more prestigious commission. You get  
6 free tickets to football games, basketball games.

7 Q But an appointment to the Highway  
8 Commission was highly sought?

9 A By some people, yes.

10 Q That was because the Highway Commission had  
11 an important role in awarding contracts for the  
12 building of highways?

13 A It's an independent agency, independent of  
14 the Governor. It has its own director and it awards,  
15 decides which roads are built and where, state  
16 roads.

17 Q Now, NH, is that Nancy Hernreich,  
18 H-e-r-n-r-e-i-c-h.

19 A Yes.

20 Q And she was what, secretary to the Governor  
21 at the time?

22 A Appointment secretary, yes.

1 Q FL?

2 A I believe it's Fonda Lile, L-i-l-e.

3 Q What was her role at that point?

4 A I think she was an assistant to Nancy,  
5 somehow was involved in the process.

6 Q Now the memo indicates, "Please respond to  
7 Bruce rather than to Mr. Hill." Did Ms. Hernreich  
8 contact you?

9 A I don't remember. Fonda probably did, but  
10 I don't remember.

11 Q Do you remember arranging for this meeting?

12 A What I believe happened is that Rob asked  
13 me, I called Fonda, said that Rob Hill wanted to come  
14 in and bring Kent Dollar, wanted to bring some  
15 contributions to the Governor, wanted to put in a  
16 good word for Herbie. My sense is she probably said,  
17 "Who do we need to get back to," and I said, "Why  
18 don't you get back to me." I assume she or someone  
19 called me back and I relayed the word to Rob that the  
20 appointment had been set up. Again, most of that is  
21 assumptions, because it's the only way it could have  
22 happened. I don't have any specific memory of any of

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1 that happening.

2 Q There is some handwritten notations up at  
3 the top, looks like 12/14/3:00, then says A-S.  
4 12/12, FL. Do you know what that refers to?

5 A No, unless that is when the appointment was  
6 set up for, at 3:00 p.m. on December 14. I don't  
7 know what AS, whatever those next letters, I don't  
8 ever any idea.

9 Q Did you attend a meeting between the  
10 Governor and Mr. Hill and Mr. Dollar?

11 A No.

12 Q Did you discuss -- strike that. Do you  
13 know whether the meeting actually occurred?

14 A I believe it did.

15 Q Did you ever discuss with Mr. Hill or  
16 Mr. Dollar or the Governor what transpired at that  
17 meeting?

18 A No.

19 Q Have you ever discussed with President  
20 Clinton what transpired at this, at any meeting he  
21 might have had with Rob Hill or Kent Dollar?

22 A I don't recall.



1 Q Have you ever discussed with Bill Clinton  
2 at any time the appointment of Herbie Branscom to the  
3 Highway Commission?

4 A He has recently, since all of this issue  
5 came up, talked about, told me how silly it is that  
6 anybody would think that \$7,000 or \$6,000 would buy  
7 Herbie Branscom or anybody else an appointment to  
8 anything, and that anybody who knew his relationship  
9 with Herbie would understand that Herbie had been  
10 supporting him from day 1 since he had been in  
11 politics and was one of his close supporters and that  
12 Herbie would always probably been odds-on favorite  
13 for this. So he basically has told me how silly he  
14 thinks these allegations are, but that is the only  
15 context that I have had conversation with him about  
16 it.

17 Q Have you ever discussed with him whether he  
18 attended, have you ever discussed with him anything  
19 about this meeting between himself, Mr. Hill and  
20 Mr. Dollar?

21 A Not specifically, no.

22 Q Do you know whether -- strike that.

1 Have you ever spoken do Mr. Hill about the  
2 meeting at any time?

3 A Not specifically. I don't believe. No.

4 Q Have you ever discussed, spoken to  
5 Mr. Branscom about this meeting?

6 A No. I think the only time -- I have  
7 apologized profusely to both Mr. Branscom and  
8 Mr. Hill for knowing them. I mean, because, frankly,  
9 I believe none of this would be visited upon them if  
10 they didn't know me or know the President, and I feel  
11 responsible just to them, but other than that, I  
12 don't think I have ever had a substantive  
13 conversation with them.

14 Q Since January 20, 1993 have you spoken to  
15 Mr. Branscom?

16 A Since when?

17 Q January 20, 1993.

18 A Yes.

19 Q Has he been to the White House?

20 A Not that I'm aware of. I take that back.  
21 He may have come one time when the Arkansas Electric  
22 Co-ops were here.

1 Q Which would have been what year?

2 A I don't remember. I believe they came to a  
3 departure one time, the entire group of people who  
4 were up here for a meeting of the Arkansas Electric  
5 Co-op Association.

6 Q And this would have been prior to the time  
7 when there had been any press accounts stating  
8 anything about Mr. Branscom's role in the '90  
9 campaign?

10 A Yes. Excuse me. Mr. Branscom -- Mr. Hill  
11 would have been up here. I don't know whether Herbie  
12 has been up here or not.

13 Q And have you spoken to Mr. Hill at all  
14 about these events since January 20, 1993?

15 A I have never had a substantive conversation  
16 with either one of them about these events other than  
17 to express how sorry I am that they have been put  
18 through this.

19 Q Do you have any understanding as to whether  
20 anybody at the White House has attempted to contact  
21 either Mr. Hill or Mr. Branscom or Mr. Dollar about  
22 the appointment of Mr. Branscom to the Highway

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1 Commission?

2 A I don't.

3 Q Do you have any understanding as to whether  
4 there have been any attempts to communicate with  
5 Mr. Branscom, Mr. Hill or Mr. Dollar?

6 A About the appointment?

7 Q Yes.

8 A No. I don't believe so. I'm not aware of  
9 it.

10 Q How about anything having to do with the  
11 1990 gubernatorial campaign?

12 A I'm not aware. It is possible that early  
13 on before they were implicated in any sense that  
14 somebody may have, when some of these questions came  
15 up, I don't think I ever spoke to them about it, but  
16 somebody may have spoken to them about it, but I  
17 don't have any direct knowledge of that.

18 Q You don't have any understanding that the  
19 President ever spoke to them about the 1990  
20 gubernatorial campaign?

21 A I doubt seriously that, but I have no  
22 knowledge of it and I doubt that it ever happened.

1 MR. GIUFFRA: Just give me like one  
2 minute.

3 BY MR. GIUFFRA:

4 Q Are you aware of any analyses prepared  
5 during the 1992 presidential campaign of loans taken  
6 out by the Clintons in connection with the 1990  
7 gubernatorial campaign?

8 A Yes.

9 Q What do you know about such analyses that  
10 were prepared during the 1992 presidential campaign?

11 A I think I prepared them. I think I tried  
12 to prepare it. I tried to work back through, because  
13 when these questions came up I tried to work through  
14 the various loans we had and how they were repaid and  
15 when they were repaid. I don't know for what  
16 purpose. Frankly I don't remember what purpose, but  
17 I remember sitting down one day and trying to make  
18 columns and primary and general and repayment, maybe  
19 to answer Jeff Gerth's questions, now that you  
20 suggested it, maybe he might have had inquiry about  
21 the loans. I have no idea what happened. It wasn't  
22 a formal analysis. I think it was sort of like that

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1 piece of paper you had earlier where I worked through  
2 the Lyons report. I think I just simply tried to  
3 work through the various loans, when we took them out  
4 when they were repaid, so forth.

5 Q Did you share that analysis with anyone?

6 A I have a vague sense that Jim Lyons or  
7 Kevin O'Keefe were both in Little Rock at the time I  
8 was trying to do it and I talked to them about it,  
9 but beyond that, I frankly don't remember what  
10 happened to it.

11 This was early on in '92, and like I say, I  
12 don't remember it ever being any sort of the formal  
13 analysis. It might have been, I think it was more my  
14 jottings of trying to understand where the money was,  
15 when we took out loans, when we repaid loans, and  
16 what loans are still outstanding.

17 Q When did you first learn that Herbie  
18 Branscom had an interest in being appointed to the  
19 state Highway Commission?

20 A I don't have any idea. Sometime in the  
21 fall of '92 -- of '90. I don't have any idea when,  
22 though, fall or winter, October or November,

1 December, sometime in that range.

2 Q Do you recall any discussion of the fact  
3 that Mr. Branscom had an interest in being appointed  
4 to the Highway Commission with Mr. Hill, other than  
5 the one conversation you had?

6 A No.

7 Q And the question of whether Mr. -- strike  
8 that. The issue of whether Mr. Branscom -- strike  
9 that.

10 Did the issue of whether Mr. Branscom had  
11 an interest in being appointed to the Highway  
12 Commission ever come up in connection with any  
13 actions taken by the Perry County Bank in connection  
14 with the 1990 gubernatorial campaign?

15 A No. If you are asking whether or not there  
16 was any sort of reference to Herbie Branscom's  
17 interest around the same time of any event, I think  
18 the answer to that is no.

19 MR. COLE: To the best of your knowledge  
20 there is no connection between borrowing from the  
21 Perry County Bank and this subsequent appointment of  
22 Mr. Branscom to the Highway Commission? To be clear

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1 as we can.

2 THE WITNESS: Absolutely. Best of my  
3 knowledge there is absolutely no connection. Almost  
4 better than the best of my knowledge. There was no  
5 connection.

6 MR. COLE: In view of your involvement in  
7 the campaign at the time, had there been a connection  
8 it's likely would you have known about it?

9 THE WITNESS: Yes. The loans that we took  
10 out, they may, I don't know whether they are large or  
11 not large, but they were in the ordinary course of --  
12 my sense of in the ordinary course of Perry County's  
13 business and not, I never had a sense that they  
14 expressed any alarm or concern either about the  
15 number or size, and other than wanting their interest  
16 when it came due, I don't think they ever expressed  
17 any concern to me about refinancing any of them.

18 MR. SNYDER: Did the Perry County Bank give  
19 the campaign a preferential interest rate on the  
20 loans?

21 THE WITNESS: Yes, they gave us the highest  
22 rate they could charge us under the law. I don't



1 believe we ever took a loan out at anything other  
2 than the highest rate allowed.

3 BY MR. GIUFFRA:

4 Q Did you ever discuss -- you have testified  
5 to the one conversation you did have with Mr. Hill in  
6 which he said that he wanted to make some  
7 contributions, \$5- or \$6,000 contributions to the  
8 campaign, at which time he also wanted to, at the  
9 same time he handed over the contributions put in a  
10 good word for Herbie in connection with his interest  
11 in being appointed to the Highway Commission; right?

12 A Right.

13 Q So you do recall a conversation in which at  
14 least Mr. Hill indicated in connection with campaign  
15 contributions some connection to an interest by  
16 Mr. Branscom in being appointed to the Highway  
17 Commission?

18 MR. SNYDER: I object to that. I think  
19 that is a mischaracterization. There were two issues  
20 Mr. Hill wanted to talk about. If you want to say  
21 there is a connection between them, that is your  
22 characterization. That isn't what Mr. Lindsey

1 testified to.

2 THE WITNESS: It is quite often that people  
3 would like to give contributions or other things to  
4 the candidate personally because they have something  
5 they would like to also tell him, and that is a way  
6 of having an opportunity to do that.

7 To suggest that that indicates that there  
8 is a connection between the contribution and the  
9 subject is far fetched, in my opinion.

10 BY MR. GIUFFRA:

11 Q Now, in, let me show you the financial  
12 statement that the Clintons submitted to the bank.  
13 They indicate a net worth of --

14 MR. SNYDER: All is this the same one.

15 BY MR. GIUFFRA:

16 Q Yes. \$226,000. Do you recall any  
17 discussion with anyone about the fact that the  
18 Clintons' net worth was \$226,000 and they were able  
19 to obtain loans for \$180,000 from the Perry County  
20 Bank, that were unsecured loans for \$180,000?

21 A Any discussion of that?

22 Q Yes.

1 A No, I believe that people believed that the  
2 Clintons were capable of repaying any loans they took  
3 out.

4 Q Of whatever amount?

5 A Well, within reason. I see Hillary had a  
6 salary of \$135,000 or had a salary of \$135,000 plus  
7 another \$55,000 in dividends and interest, which I  
8 think are separate from the assets and liabilities.

9 Q But the net worth at this point was  
10 \$226,000 and the amount of the loans was \$180,000,  
11 almost nearly equal to their net worth?

12 A Again I don't know enough about banking to  
13 know whether or not people, I think people probably  
14 lent me mortgages that are higher than my net worth.

15 MR. COLE: I would like to ask one  
16 question. Mr. Giuffra. Is it also fair to say that  
17 the comparison Mr. Giuffra raised here is indicative  
18 of the fact that these loans were expected to be  
19 repaid with campaign proceeds and not personal funds  
20 of the Clintons, so the net worth of the Clintons  
21 perhaps was not as relevant as it otherwise might  
22 be?

1 THE WITNESS: I think that is fair.

2 BY MR. GIUFFRA:

3 Q Do you recall any discussions with anyone  
4 long those lines?

5 A No, other than the President of the United  
6 States, when asked the trial whether or not it was  
7 difficult to pay off these loans, he said, no, when  
8 you are Governor, not when you are the sitting  
9 Governor.

10 Q Why is it when you are sitting Governor  
11 it's not difficult to pay off?

12 A When you ask any sitting Senator and  
13 sitting Governor or Congressman --

14 MR. COLE: I think --

15 THE WITNESS: -- I think that it's easier  
16 than when you are a former Senator or Governor.

17 BY MR. GIUFFRA:

18 Q If Mr. Clinton lost the election, you would  
19 agree it would have been more difficult to pay off  
20 these loans?

21 A More difficult, not impossible, yes.

22 Q So the bank was taking some risk that if he

1 lost the election they might not get the money back?

2 MR. COLE: Come on, Bob, he can't speak for  
3 what risk the bank was or wasn't taking. They made  
4 the loan.

5 THE WITNESS: Any unsecured loan involves a  
6 risk with a bank, even secured loan, if it's secured  
7 by real estate where the value of real estate is  
8 going down, there is some risk. That is why they  
9 call them "loans."

10 MR. COLE: Houses in Washington, D.C.

11 BY MR. GIUFFRA:

12 Q Did you ever have any discussion with  
13 anyone about the risk that the these loans might not  
14 be repaid?

15 A No, no. These loans were made in the  
16 ordinary course of business. We would tell them what  
17 we needed. They indicated that it was, that they  
18 could lend us the money. That was the extent of the  
19 conversations I had. They knew they had a financial  
20 disclosure statement. They knew what the Clintons'  
21 net worth and income was, and they made a banking  
22 judgment to make them the loans.

1 MR. SNYDER: I would respectfully submit if  
2 you questioned half or maybe more than half of the  
3 banks in Arkansas they would have been tickled pink  
4 to do the same business with the campaign.

5 MR. GIUFFRA: I'm finished. Do you have  
6 any questions?

7 MR. COLE: No. I think you permitted me to  
8 interpose questions during your examination. I don't  
9 think it's necessary to keep Mr. Lindsey here any  
10 longer.

11 MR. GIUFFRA: Mr. Snyder, do you have any  
12 questions you would like to put to your client in the  
13 interest of fairness? Whatever you would like to ask  
14 him is fair game, so the record is complete and  
15 Mr. Lindsey's side is fairly put out.

16 MR. SNYDER: Mr. Lindsey is not a party to  
17 this proceeding and I appreciate the fact that you  
18 did allow some questions before, and I'm not here to  
19 go through the whole story. So thank you for the  
20 offer. It's after 8:00 at night. I think we are all  
21 ready to go home.

22 MR. GIUFFRA: I want to state on the record

1 our appreciation to Mr. Lindsey for his  
2 cooperativeness and also to his counsel, Mr. Snyder,  
3 both of whom have been very cooperative to the  
4 Committee, and I know Mr. Lindsey has been here many  
5 times.

6 THE WITNESS: I'm going to miss it.

7 MR. GIUFFRA: And he has been very  
8 cooperative, and I want to apologize on behalf of the  
9 Committee for some of the conduct and waste of time  
10 that went on before 4:00 today. I would just note  
11 for the record that since 4:00 we really haven't had  
12 any problems and the deposition has moved in a very  
13 expedited way. And I also appreciate the way  
14 Mr. Cole has conducted himself and I really apologize  
15 again for anything that happened, and to the extent  
16 my conduct was in any way less than the best, I  
17 apologize to you both, but I apologize on behalf of  
18 the Committee for anything that went on here, because  
19 I think there were some unfortunate things said, and  
20 you both have been very courteous and professional.

21 MR. SNYDER: Thank you, Mr. Giuffra.

22 (Whereupon, at 8:04 p.m., the deposition

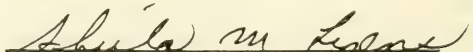
1 was concluded.)  
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BRUCE R. LINDSEY



CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, SHEILA M. LYONS, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires      AUGUST 31, 1997

## Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.  
 Suite 490-North  
 Washington, D.C. 20004  
 (202) 514-8688  
 Fax (202) 514-8802



April 30, 1996

Michael Chertoff, Majority Special Counsel  
 Richard Ben-Veniste, Democratic Special Counsel  
 United States Senate  
 Special Committee on Whitewater and Related Matters  
 534 Senate Dirksen Office Building  
 Washington, D.C. 20510-6075

Dear Messrs. Chertoff and Ben-Veniste:

As part of its preparations for congressional hearings, the Senate Special Committee has provided this Office with four lists of witnesses the Committee believes may have information material to its investigation. The Committee has asked whether our investigation would be hindered or impeded if the Committee examines those witnesses, whether by interview, deposition or at a public hearing. Our review has focused on the witness lists dated: March 12, 1996; March 25, 1996; March 28, 1996; and April 18, 1996.

At this time, we believe that our investigation and prosecutions would be hindered or impeded if the Committee examines in any forum any of the following ten individuals the Committee has identified as potential witnesses: Neal Ainley<sup>1</sup>; Becky Ainley; Helen Brandon; Joe Carter; Naomi Chambliss; Glenda Cooper; J. Gregory Pierce; Charles V. Roland, Sr.; B. Marty Satterfield; and Richard Lee Tiago. Each of these witnesses has cooperated in our ongoing investigation and prosecutions. Moreover, we anticipate calling all of these witnesses to testify during the trial of United States v. Herby Branscum, Jr. and Robert M. Hill in June 1996.

As I informed Mr. Chertoff today, our concerns with respect to Neal Ainley, Becky Ainley, and J. Gregory Pierce<sup>2</sup> are especially strong. These individuals are important government witnesses in the trial of United States v. Herby Branscum, Jr. and Robert M. Hill. As we have previously explained to the Committee in connection with the trial of United

<sup>1</sup> Mr. Ainley is not included in the Committee's recent lists. We first expressed concerns regarding Mr. Ainley, who we also plan to call at trial, in our letter to the Committee of October 20, 1995.

<sup>2</sup> J. Gregory Pierce is an Internal Revenue Service agent who has worked in our Little Rock office. He has played an active role in investigating matters related to Perry County Bank, as well as other matters. For reasons we have expressed to the Committee in other contexts, we strongly oppose any examination of Mr. Pierce by the Committee.

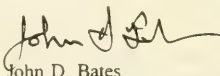
States v. James B. McDougal, et al., pretrial disclosure of such testimony would seriously disrupt this Office's trial preparation, and perhaps dramatically alter the conduct of the upcoming trial. It would also seriously jeopardize our continuing investigation. Finally, it could also lead to claims by the criminal defendants that they suffered prejudice to their right to a fair trial.

You have also asked when our concerns with respect to these ten witnesses might change. The trial in United States v. Herby Branscum, Jr. and Robert M. Hill is scheduled to begin on June 17, 1996. We are, of course, mindful of the fact that the Committee's current authorization expires on June 14, 1996. Nevertheless, our duties and responsibilities as prosecutors compel us to conclude that examination of these witnesses prior to the completion of the trial would hinder or impede our investigations and prosecutions.

We do not have similar concerns at this time with respect to the other witnesses the Committee has identified. In so stating, however, we should emphasize that we adhere to our concerns with respect to hearings on certain subject matters -- including hearings on Perry County Bank -- as articulated in our letter to the Committee of September 27, 1995.

We hope that the Committee will be able to accommodate our concerns with respect to these few witnesses, and particularly with respect to Neal Ainley, Becky Ainley and J. Gregory Pierce. If you have any questions, please contact me at (202) 514-8688.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Bates", with a stylized flourish at the end.

John D. Bates  
Deputy Independent Counsel

Steve

June 25, 1997

Leonard H. Becker, Esquire  
Office of Bar Counsel  
District of Columbia Court of Appeals  
515 Fifth Street, NW - Building A, Room 127  
Washington, D.C. 20001-2797

RE: Bar Counsel Investigation  
Undocketed No. U-258-97

Dear Mr. Becker:

In further response to your letter of May 16, 1997, I am herewith enclosing the transcript of the May 9, 1996 Pretrial Conference in the matter of U.S. vs. Herby Branscum, Jr., et al. This transcript was obtained from the United States District Court in Little Rock, Arkansas.

Certain pages of this transcript are cited as "Exhibit 2" in the afternoon portion of the deposition of Bruce R. Lindsey taken on June 8, 1996. As yet, we have been unable to locate the document cited as "Exhibit 4".

If you or any member of your staff has any questions or require further assistance in this matter, please feel free to contact Mr. Joseph Kolinski, the Committee's Chief Clerk at 202-224-3043.

Sincerely,

Alfonse D'Amato  
Chairman

AMD:jk  
Enclosures

RAFT



THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION

UNITED STATES OF AMERICA,	*	
	*	No. LR-CR-96-49
Plaintiff,	*	
	*	
vs.	*	Thursday,
	*	May 9, 1996
HERBY BRANSCUM, JR., et al,	*	Little Rock, Arkansas
	*	
Defendants.	*	1:28 p.m.
	*	

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PRETRIAL CONFERENCE

BEFORE THE HONORABLE SUSAN WEBBER WRIGHT,  
United States District Judge.

APPEARANCES:

For the Plaintiff: JACKIE M. BENNETT  
KENNETH W. STARR  
ERIC JASO  
W. WILLIAM EWING, JR.  
Office of Independent Counsel  
Two Financial Centre  
10825 Financial Centre Parkway, Suite 134  
Little Rock, Arkansas 72211

For the Defendants: JAMES R. RHODES, III  
Dover & Dixon  
TCBY Building  
425 West Capitol Avenue, Suite 3700  
Little Rock, Arkansas 72201-2692

Proceedings Reported by Machine Shorthand;  
Transcript Prepared by Notereader.

Lois M. Lambert  
United States Court Reporter  
Little Rock, Arkansas

(Pages 1-81)

(Appearances continued)

For the Defendants: DAN C. GUTHRIE, JR.  
Attorney at Law  
1845 Woodall Rodgers Freeway, Suite 1000  
Dallas, Texas 75201

JACK T. LASSITER  
Hatfield & Lassiter  
401 West Capitol Avenue, Suite 502  
Little Rock, Arkansas 72201-3437

Lois M. Lambert  
United States Court Reporter

P R O C E E D I N G S

THE COURT: Good afternoon.

ALL: Good afternoon, Your Honor.

THE COURT: We are here to handle several matters. This is a hearing, by the way, in United States versus Herby Branscum, Jr. and Robert M. Hill. And the number is LR-CR-96-49. Let the record reflect that the defendants are present in court with their counsel, and the government is also represented today by -- I think I know two of you. I know Mr. Starr and Mr. Ewing, but I don't know --

MR. EWING: This is Eric Jaso, Your Honor.

THE COURT: Eric Jaso?

MR. EWING: J-A-S-O, just like it sounds.

THE COURT: How do you do, Mr. Jaso?

MR. JASO: How do you do.

THE COURT: All right. I recognize your name now from the questionnaire that you submitted.

All right. I wanted to point out that in the order that -- that the Court issued with respect to this pretrial conference, we had decided that the discussion would include, among other things, potential questions for the jury questionnaire. So we'll take that up. And I know both of you have submitted questionnaires, and I know, Mr. Lassiter, you noted the OIC on your questionnaire. And have

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1 you received their copy as well?

2 MR. LASSITER: Yes, Your Honor. We received it  
3 this morning.

4 THE COURT: All right. Good. And then also,  
5 rules on courtroom procedure, meaning rules governing  
6 ingress and egress from the courtroom, reserved seating for  
7 the press and that sort of thing. These are just more  
8 mechanical matters that I wanted to take up as well, if we  
9 have time.

10 I would also like to ask about the status of these  
11 Rule 17 subpoenas. Now, Mr. Lassiter, you subpoenaed Neal  
12 Ainley's attorney duces tecum pursuant to Rule 17(c), which  
13 would permit, with Court permission, you to subpoena them  
14 prior to trial. And they have filed a motion to quash, of  
15 sorts, asserting, number one, privilege, and, number two, I  
16 guess is attorney work product. And if it's attorney work  
17 product and available elsewhere, it's protected.

18 Now, are you asking for any sort of hearing on this?

19 MR. LASSITER: Your Honor, I think you could rule  
20 on the briefs that have been submitted. They filed a motion  
21 to quash, we responded. We didn't think their motion was  
22 well-taken at all. We -- we're not asking for any  
23 attorney-client communications or any of their work product.  
24 We just want their correspondence with the Office of  
25 Independent Counsel. And I don't think, by any stretch of

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1 the imagination, that's privileged as a work product under  
2 the attorney-client privilege.

3 THE COURT: All right. That's the only thing  
4 I've really been stewing about this morning, if you want to  
5 know the truth, is worrying about this, because there are  
6 just a number of competing considerations. First of all, I  
7 can appreciate your need for the information. And I  
8 understand that -- that in a situation like yours, you could  
9 really -- and to prepare for your defense, some of this  
10 information would really be helpful to you in advance. On  
11 the same token, I can understand Mr. Bristow and Mr.  
12 Bequette's position that this is privileged and would  
13 represent their work product.

14 Now, first of all, the communications, what gave me  
15 the hardest problem -- the biggest problem was their  
16 communication. The lawyers' communication is ordinarily not  
17 privileged. The privilege attaches, really, to the client's  
18 communication, the client's communication to the lawyer.  
19 And there are all other sorts of exceptions. But what I am  
20 concerned about here is that the communications that these  
21 lawyers made to OIC were made on behalf of Mr. Ainley and  
22 perhaps might reveal his communications to the lawyers. And  
23 I certainly think that to that extent, that would be  
24 privileged.

25 Another problem I have with your request for the

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1 potential testimony of Mr. Ainley relevant to the indictment  
2 of these defendants, is that any statement Mr. Ainley might  
3 have made that would be covered by the Jencks Act is not  
4 discoverable from the government. And so now you're trying  
5 to get it from his lawyers. And I don't know that it would  
6 be appropriate for me to permit you to circumvent the  
7 purpose of the Jencks Act, or one purpose of the Jencks Act,  
8 by a Fed Rule 17(c) subpoena. It bothers me that you don't  
9 have the information to prepare for trial, but it likewise  
10 bothers me that Congress intended that you not be permitted  
11 to have these statements until after they've been given by  
12 the witness, after they've been delivered.

13 And another thing that -- I guess judges and lawyers  
14 are just -- are going to be biased in favor of the privilege  
15 probably more than -- maybe I'm more biased in favor of the  
16 privilege than I should be. But I think it would be bad  
17 precedent for me to allow you to get into the files of Mr.  
18 Bequette and Mr. Bristow through the subpoenas. I think it  
19 would be a dangerous precedent, and I think I would be  
20 putting myself into a position of monitoring this type of  
21 discovery request in a lot of different cases, because a lot  
22 of our cases are interrelated. And we have here, of course,  
23 Mr. Ainley's case, and it's closely related to Mr.  
24 Branscum's and Mr. Hill's. But this is not the only  
25 interrelated case we get. Just about everyone in White

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1 County who has been prosecuted for methamphetamine is either  
2 a relative or a business associate or erstwhile drug dealer  
3 type of business associate with every other defendant we  
4 have in White County. And I really don't think, Mr.  
5 Lassiter, that you want lawyers doing this to you in other  
6 cases.

7 MR. LASSITER: Your Honor, I have had lawyers do  
8 that to me in other cases, and I haven't even resisted. It  
9 never occurred to me that communication I had with the  
10 government or a letter from the government back to me was  
11 privileged in any manner at all.

12 THE COURT: Even if it reflected something your  
13 client had told you?

14 MR. LASSITER: Well, it's my understanding of the  
15 law, and I think I can provide cases to the Court, that if  
16 the attorney makes disclosure of the client communication to  
17 a third party, it's no longer privileged.

18 THE COURT: I think that that ordinarily is the  
19 case, unless it was intended to remain privileged in  
20 connection with that attorney's representation of the  
21 client.

22 So I'll tell you what I'm going to do. I'm not going  
23 to rule on that right now. I know what the OIC thinks of  
24 it, because they responded in a motion. My ruling on the  
25 motion was simply, you know, give it a try, issue the

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1 subpoenas, see what happens. And if I recall, I suggested  
2 that probably this would happen. In other words, they would  
3 come back with attorney-client privilege.

4 But I don't want to be flippant or hasty in my ruling.  
5 And I have been doing research on this today. I initially  
6 had thought that the purpose of the Jencks Act was really to  
7 prevent a defendant from influencing a government witness  
8 prior to trial. Actually, what my research has revealed is  
9 that it's more to keep defendants from having full access to  
10 government files and to limiting the defendant's access to a  
11 government file to the impeachment evidence the defendant  
12 needs to satisfy the due process requirement. And I just --  
13 I'm not really ready to rule. I'm intrigued by it. I want  
14 to be very careful in doing it.

15 I understand your need for the information. And I  
16 agree with you that their response was not well-written. It  
17 was very brief. I know that they've had it for a while and  
18 you are mystified as to why they didn't say anything more.

19 But I'm going to think about this some more, and if  
20 need be -- I'm not saying I'm going to ask for any more  
21 documents. I'm looking at it now. But some of my problems  
22 are to what -- I mean, in other words, one issue is to what  
23 extent will the lawyers' communications to OJC reveal  
24 confidential communications that the lawyers have had with  
25 Mr. Ainley? And another problem I have is will the purpose

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1 of the Jencks Act be circumvented by permitting you to  
2 discover potential testimony prior to trial, Mr. Ainley's  
3 testimony prior to trial? And I am not as concerned about  
4 promises made that aren't set forth in the plea agreement.  
5 You can find that out, by, you know, questioning Mr. Ainley  
6 on the stand. And you're certainly entitled to that, to any  
7 of that information, after the testimony.

8 Let me ask, though, the Office of Independent  
9 Counsel -- it's represented here today, of course -- but to  
10 what extent do you believe you have the letters that are in  
11 that -- that would be in Mr. Bristow's file?

12 Mr. Ewing?

13 MR. EWING: Your Honor, I think what we have is  
14 correspondence between us and Mr. Bristow and Mr. Bequette.  
15 I do know that there is at least one letter that we will  
16 probably be giving them on the 28th, vis-a-vis Brady  
17 material, impeachment materials, etc., which is a letter  
18 from us to the lawyers. Other than that, I don't -- as far  
19 as we're concerned, this is not normally discoverable  
20 communications unless it is Brady material.

21 THE COURT: Of course, I'm not trying to get it  
22 from you. They're trying to get it --

23 MR. EWING: I understand that.

24 THE COURT: -- from someone. And there's very  
25 little authority on this that's on Westlaw or that's in the

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1 treatise, because I've been looking myself this morning.  
2 And on the one hand, I can understand how the limitations on  
3 criminal discovery are strapping the defense attorneys here.  
4 And I would -- as a lawyer, I know how they would like to be  
5 well prepared. And I guess I'm, you know, on the side of  
6 being rather free with discovery is what I'm trying to say,  
7 in the interest of getting lawyers -- helping lawyers  
8 prepare for their case, because, clearly, the better  
9 prepared they are, the better able they are to represent  
10 their client.

11 On the other hand, the Jencks Act limits,  
12 unquestionably, access to statements of government witnesses  
13 until after the testimony. And notwithstanding anything  
14 they might do in 5th Circuit or anywhere else, I'm going to  
15 stick with that. We have already agreed that impeachment  
16 material that does not rise to the level of a statement will  
17 be exchanged on the 28th of May. And we have already agreed  
18 that, of course, Brady material will be turned over as you  
19 realize that you have it, because that's what the law  
20 requires.

21 Now, when it comes to communications by -- I mean a  
22 letter by Mr. Bristow, for example, to Mr. Ewing, that  
23 letter, without my looking at it -- and I'm trying to avoid  
24 this business of in camera review of everything, but I know  
25 in the area of privilege, judges get into that business

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1 sometimes quite heavily. And it might get to that.

2 But I'm hesitate to tell Mr. Bristow that he must hand  
3 over all his communications, because some of that might  
4 include something that would be a confidential communication  
5 from Ainley to him, that Mr. Ainley never agreed to be  
6 shared with third parties except in connection with his  
7 defense. And that would be -- it's a private negotiation  
8 and it's not a waiver of the privilege.

9 So that's what you're really -- I mean, that's one of  
10 the things we're having to ask.

11 MR. EWING: I mean, obviously, I can say my main  
12 concern is the Jencks Act.

13 THE COURT: Uh-huh.

14 MR. EWING: I don't really see us as having a dog  
15 in the fight on this subpoena. Obviously, we would -- we  
16 would express that we don't want them going around the  
17 Jencks Act. We did -- we didn't prompt this motion from Mr.  
18 Bequette and Mr. Bristow. We do know --

19 THE COURT: Why --

20 MR. EWING: -- that we have one letter that we  
21 would turn over in the normal impeachment --

22 THE COURT: Well, I have a dual concern. I have  
23 the Jencks Act. But, again, I don't know that if -- if the  
24 Jencks Act's primary purpose is to protect defendants from  
25 getting into your files wholesale, then the Jencks Act

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1 concern is no longer a concern. On the other hand, if the  
2 Jencks Act's purpose includes protecting the government's  
3 case, in that under no circumstances should the defendant  
4 learn of a witness's statement prior to trial, then you're  
5 still in the game.

6 And I'd always thought, quite frankly, that the  
7 Jencks -- until I started looking at it -- that the Jencks  
8 Act was designed to protect government witnesses from  
9 literally being rubbed out, in some circumstances, by  
10 defendants who are likely to do that, or influenced. I  
11 mean, you know, heavily influenced -- persuaded, I should  
12 say, to change their testimony.

13 But now it's clear that at least some members of  
14 Congress -- the report I've read said they're more  
15 interested in protecting your files from wholesale access by  
16 the defendant. And so that would eliminate the Jencks Act,  
17 and I'd be more concerned then with the attorney-client  
18 privilege, which I know doesn't bother you. I realize it  
19 shouldn't bother you in this instance. But that's what I'm  
20 concerned about.

21 I'm concerned about, one, the Jencks Act. I'm not  
22 sure I'm still concerned about it. And, secondly, the  
23 attorney-client privilege. I just don't like the idea.  
24 I've never had a request like this. Mr. Lassiter claims  
25 that this happens to him frequently. You just hand over --

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1 MR. LASSITER: Not -- your --

2 THE COURT: I mean --

3 MR. LASSITER: Not frequently, but it's happened  
4 to me twice in the past, and I've complied with the  
5 subpoena.

6 THE COURT: You complied with the subpoena on  
7 communications, even though the communications might have  
8 revealed your client's confidential communications with you?

9 MR. LASSITER: Your Honor, I don't think in any  
10 of those cases it did. But I don't think it would have made  
11 any difference because if the communications conveyed to the  
12 third party, whether it's OIC or -- or any -- any third  
13 party, it's my understanding of the law that the  
14 communication is no longer privileged.

15 THE COURT: It's not that simple. What I have  
16 found is not that simple. I mean, that is a Hornbook rule.  
17 But it goes beyond that. It goes beyond that. It's not  
18 that simple. And anyway, I'm going to keep on looking at  
19 it. And if I want some more briefs, I'll ask you for it.  
20 But I'm just going to keep on researching it. There's  
21 really not much there that I can find. But that is what  
22 concerns me. And it might end up just being a plain, old in  
23 camera review.

24 Let me ask you this, Mr. Lassiter, with respect to  
25 these subpoenas. Some of this would be clearly discoverable

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1 under the Court's pretrial order with respect to exchange of  
2 documents. Do you take the position that if it is  
3 discoverable under Rule 16, that if it's attorney work  
4 product, it should not be revealed?

5 Ordinarily, attorney work product, like documents  
6 and working papers and -- I don't mean correspondence,  
7 although, correspondence might fit into that as well. The  
8 work product is not a privileged communication. And  
9 ordinarily, you can get attorney work product in discovery  
10 if there's no other way to get it.

11 If you can get it through Rule 16, would that satisfy  
12 you? I mean through the May 28 exchange, would that satisfy  
13 you, or do you just want it earlier?

14 MR. LASSITER: Well, the earlier we get it, I --  
15 you know, the better it is for us. But I think what -- the  
16 kinds of communications between the Office of Independent  
17 Counsel and Mr. Ainley's attorneys that we're seeking aren't  
18 going to be in their Rule 16 production. For example, I  
19 would like to see, pursuant by 17(c) subpoena from those  
20 lawyers, what communications, what writings between the  
21 government and those lawyers were passed back and forth  
22 concerning plea negotiations.

23 We have an individual here that was charged with four  
24 or five felonies and pled to two misdemeanors. I'd like to  
25 see how they got there. And those kinds of letter, in terms

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1 of plea negotiations, probably don't contain any kind of  
2 attorney-client correspondence. If they exist, I'd like to  
3 see how they worked their way there. And it might be  
4 interesting to compare that at trial to certain statements  
5 that come out that Mr. Ainley was giving during that time  
6 period, if they conflict. So those are the kind of  
7 communications I'd like to see.

8 THE COURT: All right. Well, you've given me  
9 some guidance, and I'm going to, again, just take this under  
10 advisement. And, frankly, Mr. Bristow and Mr. Bequette  
11 aren't here and probably didn't -- I mean, surely didn't  
12 even receive notice of this. But this is harder than I  
13 thought it would be. When I first thought, I just thought,  
14 oh, well, that's Jencks Act stuff. And then I started  
15 thinking, well, these are letters that -- you know, lawyer  
16 communications, that's not client communications. And I  
17 really kind of got into it, and it got a lot harder than it  
18 was at first blush. So I'm going to take that under  
19 advisement, try to rule on it as soon as I can.

20 MR. LASSITER: Thank you, Your Honor.

21 THE COURT: Now, let's take up the questionnaire,  
22 because if the questionnaire -- Mary is not here. Yes, she  
23 is. Hi. Tell me something. How did they do it with the  
24 Tucker trial? We sent out the questionnaire, they had a  
25 time by which they were to send them back in. And did we

1 have another pretrial? I mean, did the Court have another  
2 pretrial with the lawyers?

3 MS. BUFORD: Your Honor, we did not send them  
4 out.

5 THE COURT: Oh.

6 MS. BUFORD: We brought the jury in to complete  
7 them --

8 THE COURT: Okay.

9 MS. BUFORD: -- approximately two weeks prior to  
10 the beginning of the trial.

11 THE COURT: And then was there a pretrial where  
12 the lawyers and judge made rulings on striking for cause on  
13 the basis of the questionnaire before the real voir dire?

14 MS. BUFORD: The Court copied the questionnaires  
15 and provided them to counsel and they had a time period, I  
16 think it was about three or four days, to go through them  
17 and suggest by motion any -- any strikes to the judge. It  
18 was not a hearing, per se. They just did it through a  
19 motion.

20 THE COURT: All right. Well, I'll ask Mr. Ewing.  
21 Were you part of that process?

22 MR. EWING: I -- I'm familiar with it.

23 THE COURT: How did it go, as far as you were  
24 concerned?

25 MR. EWING: Your Honor, I -- if I could address

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1 this.

2 THE COURT: Sure.

3 MR. EWING: What happened in the other case,  
4 the -- the questionnaires -- the -- the notices were sent  
5 out and I think -- I don't know if they had two -- maybe 150  
6 came. They sent out, like, 300 invitations --

7 MS. BUFORD: Right.

8 MR. EWING: -- if I can call them that. And they  
9 had two sessions. I think they had one in the morning and  
10 one in the afternoon where all the lawyers, defendants were  
11 present. The judge introduced them, then handed out the  
12 questionnaires. And let's say there were 75 in the morning  
13 and 75 in the afternoon. All they did that day was -- was  
14 fill out the questionnaires, turn them in. They were copied  
15 for both sides. Like Ms. Buford says, three or four days  
16 later, each side turned in, we want to strike number 6 for  
17 cause and here's why, and so forth.

18 One of the problems I -- I personally had with this,  
19 they published all the jurors' names in the paper, which I  
20 don't think is appropriate. Lots of those people -- I won't  
21 say a lot, but you had the -- the contact, here's everybody  
22 publicized. As far as we're concerned -- then -- then when  
23 they came in that day, of course, then they had the regular  
24 voir dire. And when we drew -- Ms. Buford drew the names  
25 of, I guess, the first 56 or so for the panel, and then the

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1 regular voir dire took place. And, obviously, the lawyers  
2 had the benefit of some of the questionnaires and there were  
3 some questions, obviously, raised on that questionnaire that  
4 then was inquired into.

5 I don't know that we need to bring them in separately  
6 like that. As far as I'm concerned, we could bring them in  
7 the start day of the trial, they could fill the  
8 questionnaires out and maybe give us the rest of that day  
9 and bring them back the next day, at -- at the most. I -- I  
10 just don't see the necessity for bringing them in in this  
11 case. This is, obviously, a less complicated case. It's  
12 going to be a lot shorter case.

13 So from my standpoint, the government would be happy  
14 to give them the questionnaire on the first day of trial,  
15 let them fill them out, give us the rest of that day to look  
16 at them, hand in any challenges for cause and do a regular  
17 voir dire the next day.

18 THE COURT: Mr. Guthrie and Mr. Lassiter,  
19 Mr. Rhodes? What -- I wanted Mr. Ewing's opinion based on  
20 his experience in the Tucker trial. And now I'm seeking  
21 your input.

22 MR. GUTHRIE: Your Honor, on behalf of Mr.  
23 Branscum, I was not familiar with the details and the way  
24 this was handled. I don't see any harm, though, in bringing  
25 the panel in two weeks beforehand to complete the -- the

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1 questionnaires.

2 I do share the concern that Mr. Ewing has raised  
3 concerning the publicity about the -- the jury members. I  
4 think that we should all be aware of the civic duty that the  
5 jurors will be performing in this case, as they would in any  
6 case. And for there to be a publication because of interest  
7 in the press of the jurors' names so that they would perhaps  
8 be contacted by jurors or -- or outside influences would  
9 come to bear on them is, frankly, a matter of concern to me  
10 also. I think that that could be dealt with, though, very  
11 easily by the Court simply keeping the jury panel under seal  
12 until -- until the day of the trial or until -- until we  
13 actually select the jury.

14 So I don't -- I think that the concern that he's  
15 raised can be dealt with with alternative means.

16 THE COURT: All right. Let me say this, I'd kind  
17 of like to do a little bit of what both of you suggest.

18 I want to keep it under seal, Mary.

19 MS. BUFORD: Yes. Thank you.

20 THE COURT: I do want to keep that under seal.  
21 And we'll talk about just how long later. It might be a  
22 good idea to keep the names of the jury under seal until the  
23 trial is complete, until it's just over.

24 MS. BUFORD: Uh-huh.

25 THE COURT: And that way we don't have to

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1 sequester the jury or worry about that. So that's what I  
2 would like to do.

3 Now, does anyone object to that?

4 MR. EWING: Well, the only thing, Your Honor,  
5 once we're doing the voir dire in open court, I assume, you  
6 would think the names are going to come out, in other words,  
7 at that point.

8 THE COURT: Well, you can address them by number.

9 MS. BUFORD: Yes.

10 THE COURT: You could say, Juror No. 6, tell me  
11 about your job at the bank, what do you do?

12 MR. EWING: Whatever. I mean, we don't have any  
13 strong feeling one way or the other once -- once they're in  
14 here and once they're picked.

15 THE COURT: Well, some of these people are going  
16 to be -- you know, people are going to know who they are,  
17 because they'll recognize some of them. I mean, that's  
18 inevitably the case. But I'm going to consider just keeping  
19 them under seal until after -- in other words, just not  
20 having the names in the paper. And then once the verdict is  
21 in, we can tell the press who the jury was. I don't see  
22 anything wrong with that, and I think it might very much be  
23 in the interest of justice to proceed that way, because I  
24 don't think we're going to sequester this jury. I don't  
25 plan to do that.

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1 Now, I mentioned to you a district-wide summons. Now,  
2 has any attorney considered that? I'm particularly  
3 concerned about defense attorneys. Do you-all want us to  
4 try to do that, have a district-wide summons for this panel?

5 MR. LASSITER: Mr. Hill does not, Your Honor. We  
6 would -- we would --

7 THE COURT: All right.

8 MR. LASSITER: -- prefer just to keep it just  
9 within the Western Division.

10 THE COURT: All right.

11 MR. GUTHRIE: As would we, Your Honor.

12 THE COURT: All right. I'll ask OIC if they have  
13 any --

14 MR. EWING: We -- we don't --

15 THE COURT: All right.

16 MR. EWING: If they -- if they --

17 THE COURT: That will be --

18 MR. EWING: -- don't want to do that, we -- we'll  
19 be in agreement with them.

20 THE COURT: All right. Well, I'm going to think  
21 a little bit more about keeping the names under seal. I  
22 just think that would be, perhaps, more helpful. I'm going  
23 to ask Mary's advice also. She has been through this  
24 recently,

25 MR. EWING: The only -- the only observation I

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1 would make, Your Honor, if -- if we're having a public voir  
2 dire and -- and, you know, okay, Juror No. 6, you put down  
3 here that -- that you worked this, and then you'll have the  
4 media all out trying to figure out who number 6 is. And,  
5 you know, we'd just as soon the media stay away from them.  
6 But if it's a mystery still, the media is liable to be out  
7 trying -- oh, I've now found out who number five is, and you  
8 get --

9 THE COURT: Oh, I see.

10 MR. EWING: -- a lot of extra curricular activity  
11 that I don't think is good.

12 THE COURT: Well, you might be right. It might  
13 be best just to -- well, just the way we did in paneling the  
14 grand jury. Let them know where we're going to -- you know,  
15 what we're doing and where we're going to be. Maybe that's  
16 the best way to do. Just note, you know, the order was not  
17 under seal and where and when and what was not under seal.  
18 And it takes away the mystery. So that might be the best  
19 way to do. Let me think about it.

20 And I will talk to Mary and I'll also talk to Judge --  
21 I'm going to talk to Judge Howard's personnel because I  
22 think we can learn from his experience in the Tucker trial.  
23 I don't think this one will have as much interest, but it  
24 could.

25 Now, on -- let's go to -- so we'll send out the

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1 questionnaire. What I would like to do is send it out,  
2 instead of two weeks before, I would like to send it out,  
3 maybe, one week before. Or send it out so we'll have two or  
4 three days before trial to work with it.

5 MS. BUFORD: May I make a comment, Your Honor?

6 THE COURT: Yes, uh-huh.

7 MS. BUFORD: We -- we went over this quite a bit  
8 in the other trial and decided not to send it out.

9 THE COURT: I shouldn't say send it out. Well, I  
10 mean get them in here and have them fill it out, maybe the  
11 week before.

12 MS. BUFORD: That will be fine.

13 THE COURT: And, Mary, tell me about -- now,  
14 Monday is usually not a good day for you, is it? Would  
15 Monday, June 10 be a bad day?

16 MS. BUFORD: Oh, I'm sure we can work it out. It  
17 will be okay.

18 THE COURT: Okay. Isn't that when we're going to  
19 be in Hot Springs, Sandy? I'm going to be in Hot Springs?

20 THE CLERK: Well, you are that week. We have a  
21 criminal trial set for Monday of that week. I don't know  
22 what will happen to it.

23 THE COURT: Well, I don't have to be here. I  
24 don't intend to do anything other than -- I don't intend to  
25 introduce lawyers that day. I just intend for Mary to keep

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1 the veniremen downstairs in the jury room and distribute the  
2 questionnaire and have them fill it out. That's all I  
3 intend to do. We're not going to have a session of court.

4 MS. BUFORD: Your Honor.

5 THE COURT: Yes.

6 MS. BUFORD: We might try it on Friday before.

7 THE COURT: All right.

8 MS. BUFORD: And that would give us the weekend  
9 to get them copied --

10 THE COURT: All right.

11 MS. BUFORD: -- and getting them copied is quite  
12 a job.

13 THE COURT: Okay.

14 MS. BUFORD: And then we would have the weekend  
15 to do that and they would have the full week to review them.

16 THE COURT: Okay.

17 MR. .HODES: What date would that be, Your Honor?

18 MS. BUFORD: June 7th.

19 THE COURT: Yeah, 7th.

20 MS. BUFORD: June 7th.

21 THE COURT: Friday the 7th. But you do not need  
22 to be around here for that. What she is suggesting -- and  
23 neither do I. And I'm going to be over in Hot Springs, I  
24 think, for the bar meeting, whenever that is. Sandy says we  
25 have a criminal case.

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1 THE CLERK: The bar meeting starts on the 12th.

2 THE COURT: On the 12th? Well, we can go a long  
3 time, go all night if need be. And that way she can  
4 duplicate them. And I think the shorter the time period,  
5 the less apt it is we are to have problems. Yet, I don't  
6 want just to do it one day and then come in the next and try  
7 the case, because there are going to be a number of  
8 problems. I just don't want to have the pressure on the  
9 Court or the lawyers.

10 MR. EWING: Your Honor, the only thing about if  
11 they came in the Friday before, I know that because of the  
12 questionnaires, we'll -- maybe we'll see about the  
13 wording -- but they are surely going to know at that point  
14 who the people are. And I think the -- the jurors,  
15 prospective jurors, have got to be told -- you know, given  
16 all the instructions about secrecy, you don't talk about  
17 this case with anybody, you don't read up on it. In other  
18 words, just like they're -- they're sitting here --

19 THE COURT: Yes.

20 MR. EWING: -- what you would normally tell them.  
21 Because if -- if they're not instructed on that Friday, then  
22 they're gone for a week and come back -- in other words,  
23 they've got to have some guidance on --

24 THE COURT: Yeah, they do. Do you think it's  
25 best to have someone in a robe give them the guidance? Is

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1 that you're suggesting?

2 MS. BUFORD: I would suggest it.

3 MR. EWING: Yes, Your Honor.

4 MR. GUTHRIE: I would suggest that too, Your  
5 Honor. I think that -- I think that just the concerns he  
6 has are, again, the same kind of concerns I'd have, that --  
7 that they'd see this other, they'd say, oh, that's that  
8 case, I heard about it, and they start talking amongst  
9 themselves.

10 THE COURT: Well, could bring them in here if I'm  
11 here. We'll be here that Friday, won't we?

12 THE CLERK: Yes. We'll be here on the 7th.

13 THE COURT: We could bring them in here. We  
14 could read them an oath of secrecy, make them swear to it,  
15 and say if you can't swear to this, get out of here now, and  
16 I'll just make it very forthright. I mean, let them know  
17 how serious we are about it. Now, again, I don't see any  
18 need for any lawyers to be here. I don't know why we need  
19 to keep your clock running just for me to do that.

20 MR. GUTHRIE: The only other suggestion I would  
21 have, Your Honor, is that they -- they would be sworn as a  
22 panel, so that they are to give truthful answers to all the  
23 questions as if they were under voir dire.

24 MS. BUFORD: They -- they will be.

25 MR. GUTHRIE: Right.

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1           THE COURT: The clerk always does that. So we  
2 would do that on Friday. We'd bring them in here first and  
3 I would say you're not supposed to talk about this case,  
4 you're going to know what case it is once you fill out the  
5 questionnaire, not to talk about it. You know, I'll explain  
6 to them how important the integrity of the jury system is to  
7 our democracy and that the integrity of the system is being  
8 attacked in certain quarters and they need to do right and  
9 what have you.

10           I'm really proud of our jurors, for the most part. I  
11 think they take this very seriously, as they should. And I  
12 think that with that, that's about all the precaution we can  
13 do reasonably and still maintain our efficiency. If we did  
14 it the day before, I think we would all be under the gun.  
15 We would all be working under tremendous pressure to read  
16 all those questionnaires. This will give you time to think  
17 about some of the answers, and give me time as well.

18           And furthermore, I do not intend to dispense with oral  
19 voir dire. In other words, when we come in on the morning  
20 of the 17th, I plan to pick that -- to spend the morning  
21 picking that jury, because there's nothing like looking at  
22 them in the face and seeing what they look like and seeing  
23 their attitude. And I think that the written questionnaire  
24 can certainly be of assistance in culling out those people  
25 who cannot be fair. However, it cannot assure that those

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1 are left will be. I just don't think there is anything  
2 quite like looking at them in the face and seeing -- and  
3 also seeing how they respond to some of the questions.

4 Let me suggest that we go over, briefly, the  
5 questionnaire. There are some differences in approach. And  
6 I think this is largely something that is up to the Court's  
7 discretion, but I wanted to tell you-all some of my  
8 impressions.

9 The questionnaire submitted by both of you -- I guess  
10 each of you followed that Tucker trial questionnaire pretty  
11 much?

12 MR. LASSITER: We did, Your Honor.

13 THE COURT: So it's a lot the same.

14 On page -- I'm looking now at page 5 of Mr. Lassiter's  
15 question -- his draft. Question 42 at the bottom: "In  
16 group decision-making situations, how active are you?" I  
17 don't know that I'm going to ask that question.

18 Mr. Lassiter, this doesn't mean that you can't ask it,  
19 because I will give you time for oral voir dire. I just --  
20 that -- that is more a psychological type question, I think,  
21 that really is not designed to find out whether the juror is  
22 biased --

23 MR. LASSITER: I understand, Your Honor.

24 THE COURT: -- you know? A lot of these might  
25 be, but I just didn't much like that question.

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1           Also on yours, on page 7: "Have you formed an opinion  
2 regarding the innocence or guilt of any of the following?"  
3 I don't like that because -- I mean, I think that we'll have  
4 to ask that question in here. I think that if someone has a  
5 strong opinion as to the guilt or innocence, there are other  
6 places where they can ask it. Now, I'd like a response from  
7 Mr. Ewing.

8           What is your feeling of that, something that blatant?

9           MR. EWING: Well, as far as I'm concerned, a lot  
10 of these questions can be asked. I think this is to screen  
11 out, but --

12           THE COURT: Right.

13           MR. EWING: -- would you -- can you --

14           THE COURT: I don't know. I don't know. It's  
15 just -- what I like to do, no matter what your opinion is  
16 right now, can you put it aside and base your -- you know,  
17 base your verdict on the evidence and the law as I give it  
18 to you. Because I'm afraid someone is going -- did you-all  
19 ask this kind of question in the Tucker case? Do you have  
20 an opinion?

21           MS. BUFORD: Yes.

22           THE COURT: Did you ask that? Mr. Jaso.

23           MR. JASO: Your Honor, if I may, the -- the  
24 questionnaire that we used in the Tucker case, I -- I -- the  
25 Court, perhaps, could be reminded that it was not all of the

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1 government's choices that were made in that case.

2 THE COURT: Right.

3 MR. JASO: So this is the -- this is the  
4 questionnaire that Judge Howard approved of and as -- as --  
5 since the parties have followed it fairly faithfully, we  
6 agreed in large measure with -- with the questions that were  
7 asked. But as Mr. Ewing has pointed out before, I think  
8 some of the questions are -- we might want to take a second  
9 look at. But this is -- that question was in fact used  
10 in -- in -- in the case.

11 THE COURT: Well, I think I'm going to take it  
12 out and ask it later. I'm afraid -- that's just -- I mean,  
13 if someone says yes, then that's an opportunity for a  
14 follow-up. And do you understand that you can't -- no  
15 matter what you've read or what you think, you've got to put  
16 it aside. Can you do this? And some people say, no, I  
17 can't, no, I really can't. And others say, well, yes. You  
18 know, they know that they can't believe everything they  
19 read.

20 And I think that sometimes you get some good jurors  
21 who come in with -- with an opinion but who want to -- who  
22 are willing to just put all that aside. I've at least  
23 experienced that in civil cases, and I would think in  
24 criminal as well. I mean, that's my inclination. So I'm  
25 going to take that one out.

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1 I'm also going to take out Nos. 56 and 57. "Based on  
2 what you know about this case, do you believe the defendants  
3 can receive a fair trial?" Well, that's going to be up to  
4 me to determine, and the lawyers to point out to me, whether  
5 they think these defendants can receive a fair trial based  
6 in part on the answers that we receive in this  
7 questionnaire. I don't think that some venireman who  
8 receives this, some potential juror, is in a very good  
9 position to give me his opinion about whether these  
10 defendants can get a fair trial. I think that's up to me.  
11 And I just -- I'm not going to ask that.

12 Let's see. I'm not going to ask No. 61, 62 or 63  
13 either. I don't want them refining, mentally, what the  
14 issues are here. That's going to be for me to tell them  
15 during voir dire. No. 61: "Please state your knowledge and  
16 your understanding of the issues in this case." I'm tempted  
17 to ask it just for entertainment, because -- because no  
18 telling what will come back. I mean, it's just -- you know,  
19 just to read the answers.

20 And also, "Do you believe that Mr. Branscum is  
21 guilty?" I don't want anyone to come in here after -- I  
22 mean, I don't want anyone to say, Gee, do I have to make up  
23 my mind now? Do I think he's guilty? Do I think he's not  
24 guilty? I want them to come in here not knowing. I want  
25 them to come in here with an open mind on these issues and

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1 to prove that they're guilty beyond a reasonable doubt.  
2 That's what I'm going to require of them. I'm just don't to  
3 gear them up to thinking about guilt or not guilty.

4 No. 73 on page 10 is very similar to No. 60 on page 7.  
5 And so I'm not going to ask both of them.

6 Now, I have not compared OIC's list, questions that  
7 involve: List the people, do you know, have you done  
8 business with the defendants. Are they the same or are they  
9 different?

10 MR. EWING: I think we added perhaps -- let me  
11 see here, Your Honor. I think we added --

12 MR. LASSITER: On No. 21, you added federal,  
13 state public defender's office.

14 MR. EWING: Are you talking the list of people  
15 now? I don't know if --

16 THE COURT: Yes, sir.

17 MR. EWING: -- you were talking about just  
18 questions, Mr. Lassiter.

19 MR. JASO: We -- we added it because the defense  
20 counsel eliminated it from what had been asked in the Tucker  
21 trial, Your Honor.

22 THE COURT: All right. Well, I'm going to ask  
23 it. That's No. 21. Now, on the list which -- I got Jack's  
24 questionnaire before I got yours and so that's why I'm  
25 working from his more. On number -- I guess it's number --

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1 Jack's No. 70, 71 and 72, do you have -- I don't mind having  
2 anyone's name on the list. Let's just --

3 MR. EWING: I -- I think, Your Honor, the only --

4 THE COURT: -- use the longest one.

5 MR. EWING: The only change in that was on  
6 number -- his No. 72, we added Bruce Lindsey and Wright,  
7 Lindsey and Jennings.

8 THE COURT: All right.

9 MR. EWING: And I think we added the words "or  
10 any of their family members." That -- that is our 57 and  
11 their 72.

12 MR. LASSITER: They also deleted from our 72,  
13 "Robert M. Hill and the Office of Independent Counsel."

14 MR. EWING: That -- that should be in there.  
15 Maybe that's --

16 MR. JASO: Well, Mr. Hill, I believe was asking  
17 first --

18 MR. EWING: He's ready in No. 71, though.

19 MR. LASSITER: Is he?

20 MR. EWING: In number --

21 MR. LASSITER: It's asked a little different --

22 THE COURT: Yeah.

23 MR. LASSITER: -- a little differently. In 71 we  
24 asked if they had worked or done business with, and in 72 we  
25 ask if you personally know or have had contact with. I

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1 think that's a little different.

2 MR. EWING: Okay. Just a little different. I  
3 mean, obviously, there are going to be some other names that  
4 we might ask in the voir dire.

5 THE COURT: Right.

6 MR. EWING: So I mean, I think this is the --

7 THE COURT: Right.

8 MR. EWING: -- more important ones.

9 THE COURT: That's right. And, again, what I  
10 intend to do is share this questionnaire with you, meet with  
11 you prior to that week, sometime prior to trial -- we'll  
12 have to figure out just when -- let you make your motions to  
13 strike for cause on the basis of the questionnaire. I'm  
14 sure I'll have some of my own, sua sponte, that I won't take  
15 out. And then we will take, probably, the remnants of this  
16 and invite them -- have them all here Monday, June 17, at  
17 which time we'll ask more voir dire. And some of the  
18 questions will be the same questions.

19 In other words, I'm going to say an indictment is not  
20 evidence of anything. I mean, I'll kind of read my standard  
21 stuff and eliminate part of it. And I will let you have a  
22 limited amount of time to decide, each side. But, usually,  
23 I only give about ten minutes, but I'll probably give 20 or  
24 30, and more if you need it, to ask individual people  
25 follow-ups to my questions and also follow-ups to the

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1 written questionnaire. That's my intent.

2 I also ask that you make your motions to strike for  
3 cause up here at the bench where I am. And let me tell you  
4 one other thing. And Mr. Lassiter, I think, is the only one  
5 of you who is familiar with this procedure the way I do it.

6 And, Mr. Lassiter, I'm thinking about changing it.

7 Oh, Mr. Rhodes, you might remember it too.

8 When I voir dire in a typical trial, I voir dire the  
9 entire panel, and then we make the motions to strike for  
10 cause, and then we pick out 23 names, or however many names,  
11 18, whatever we're going to do. In this case, of course, it  
12 will be a lot more than that. I'll talk about that later.

13 The government gets, how many strikes? Six?

14 MR. EWING: Yes.

15 THE COURT: And the defendants get ten. So that  
16 would be 28. Then we're going to have alternates, and you  
17 have to have a separate alternate panel in criminal court.  
18 But that's usually the way I do it.

19 Now, tell me this, do you-all want to do it that way?  
20 It takes longer. Or do you want to pull out the 28 names  
21 plus the alternate and -- the alternate panel and address  
22 your questions just to those people? It would be shorter  
23 that way, but then when you excuse someone for cause, you  
24 have to pull another name and say, okay, now, Mrs. so and  
25 so, have you heard all of my questions? And she says, oh,

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1 yes.

2 MR. GUTHRIE: Your Honor, I would suggest that we  
3 err on the side of caution and go ahead and bring the -- get  
4 the larger group before us so that we -- we have a -- even  
5 though it may take us a little bit longer, that would be my  
6 thought.

7 THE COURT: Yeah. It does take longer, but I'll  
8 tell you what, I've always done it that way and I've always  
9 felt real good about it. And then by the time -- this  
10 means, though, when they're in the box, you don't ask any  
11 more questions. You just make your peremptories when  
12 they're in the box. It takes longer. I'll sit on it. I'm  
13 not going to decide right now. But because there's so many  
14 people, I thought maybe it would be better to pull them out  
15 and ask the questions then. But let's see how many we throw  
16 out and how many people are going to show up.

17 You know, if we only have 30 people, we're -- I  
18 shouldn't say 30. If we only have 30, we're all going home.  
19 But if we only -- if we have a hundred people, I'm going to  
20 do it the other way. If we have, you know, 40, 45, I might  
21 do it my regular way. But I just wanted to warn you that  
22 that's the way I do it. Most judges in this building do --  
23 pull the names and put them in the box and then ask  
24 questions just to the people in the box -- I say "in the  
25 box," the box only holds 14 -- and ignore the rest of them.

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1 MR. EWING: Your Honor, let me be sure I'm  
2 following you. We have 50 people here. You're saying we  
3 don't -- we don't know who's going to be in the box. We're  
4 just -- you're asking all --

5 THE COURT: That's right.

6 MR. EWING: -- 50 of them.

7 THE COURT: We haven't drawn any names.

8 MR. EWING: And after we do all that, then we  
9 pick the names.

10 The other thing I would say, I know in the other trial  
11 they've brought them in, I guess, in batches on some  
12 individual voir dire, because there were a lot of questions  
13 about pretrial publicity, you know, Have you formed an  
14 opinion? What is that opinion? Can you set the opinion  
15 aside? And, obviously, you don't want somebody sitting back  
16 here saying, well, yes, I've got an opinion. Well, you  
17 don't want them blurting out the opinion. I don't.

18 THE COURT: Well, I try to give them the old  
19 example about the woman who got up and said she had an  
20 opinion about the doctor who was a defendant. He's just a  
21 bad guy. And I said don't do that. Don't do that. If you  
22 have a really bad opinion of either the government or the  
23 defendant, don't share it with everyone else. You come up  
24 here and tell me about it and tell the lawyers, but don't  
25 tell -- and sometimes they'll not like a lawyer, you know.

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1 Even though we ask a question, you know, Have these lawyers  
2 ever sued you? And sometimes they just, you know, have no  
3 use for some lawyer. And I try to avoid that. I try to say  
4 if you have something prejudicial, you come up here. You  
5 come here and tell me about it. You must tell me, but just  
6 don't share it with everyone else. I try to do that.

7 And I don't know that pulling them out, Mr. Ewing, in  
8 advance, you know --

9 MR. EWING: I'm not suggesting that. I'm just --  
10 as a matter of just to see how we're going to do that --

11 THE COURT: Right.

12 MR. EWING: -- so we can go up to the bench if  
13 we --

14 THE COURT: We do it a lot and Lois just has to  
15 get up a lot. She puts her little microphone up here. But  
16 in a case like this, we anticipate that people will do that.  
17 And I want them to. And I surely want them to tell me if  
18 they have a strong opinion, but I don't want them to blurt  
19 it out. And usually it's worked out so far, but you never  
20 can tell. There's always a first time when you have to  
21 dismiss the entire room because something bad has happened.

22 I don't think that these defendants are -- even though  
23 they're well known to many of us here in central Arkansas --  
24 I don't believe it's going to be like Governor Tucker. And  
25 Jim McDougal had such a high profile trial earlier and

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1 Governor Tucker is such a high profile person in the  
2 community. I really don't think it's going to be -- I don't  
3 think as many people are going to have read about it as they  
4 did in the governor's case. That's just my guess. I could  
5 be wrong.

6 All right. Therefore I'll put together this  
7 questionnaire. The only other thing I want to add to the  
8 questionnaire is a scheduling question.

9 MR. EWING: I've got one more thing I want to  
10 state.

11 THE COURT: Oh. Sure. Go ahead. I'm sorry.

12 MR. EWING: Your Honor, on their No. 14 -- and we  
13 have a difference on number -- on our No. 14. In the other  
14 trial, the question was asked, Are you a member of any civic  
15 club, social club or other organization? That's the way it  
16 was asked in the other trial. And the defendants in this  
17 case, through their counsel, have added political club and  
18 religious organization. And we -- we have suggested you  
19 don't add those two items.

20 THE COURT: Can you tell me why you added  
21 political club and religious organization?

22 MR. LASSITER: My trial consultant suggested it,  
23 to be perfectly candid, Your Honor. If you wish to delete  
24 that, that's fine with us.

25 THE COURT: Well, I certainly want to take out

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1 religious organization. And we already have a lot of  
2 questions about politics. And so I'm going to just take  
3 that out too. But I'll tell you, right now, I will let you  
4 ask a question to this effect, is there anything about your  
5 moral values or religious beliefs that would prohibit you  
6 from following the judge's instructions as to the law in  
7 this case. Now, I will permit that type of question.

8 I will not permit a question like this, Are any of you  
9 not Christian? Or How many of you are Muslims in this  
10 group? I won't allow that. And I think religious  
11 organization comes close. Now, when it comes -- to  
12 something like that.

13 Now, when it comes to political clubs, there are so  
14 many questions already about how active are you. And what I  
15 would suggest that you do is if someone indicates that he or  
16 she is very active, ask how are they active politically, do  
17 they belong to an organized party, or are they active just  
18 in nonpartisan matters. In other words, you can follow up  
19 like that. Because I think that -- you know, I just would  
20 prefer you do that. I really would.

21 And, Mr. Ewing, is there anything else you want to  
22 say?

23 MR. EWING: I don't believe so, Your Honor.

24 THE COURT: I want to put down a scheduling  
25 question, but I want your advice before I do this and I want

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1 Mary's advice.

2 The trial is -- we have set aside, is it two weeks,  
3 Sandy, for it?

4 THE CLERK: (Nods head up and down.)

5 THE COURT: And we have also the third week  
6 following that?

7 THE CLERK: I'll have to check. Yes.

8 THE COURT: All right. In other words, the  
9 question to the effect that this trial might last as long as  
10 three weeks, or it's estimated to last as long as three  
11 weeks -- I hope, among us, it just lasts two -- and explain  
12 that oftentimes that a man's citizenship require that we go  
13 to a great inconvenience. In other words, I'm not going to  
14 suggest that this is a tremendous inconvenience or a great  
15 inconvenience, but sometimes we are substantially  
16 inconvenienced by the demands of jury service.

17 But I want to put in the question, are there any  
18 circumstances that would absolutely prohibit you from being  
19 available for a trial of this duration, and if so, explain.  
20 And quite frankly, sometimes people are excused when they  
21 don't -- or I'll excuse them when they don't even know  
22 they've been excused, because I don't want to give anyone  
23 the suggestion that by coming up to me with a hardship, they  
24 have can get off.

25 And I'd rather it be in the written questionnaire than

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1 oral, because if I ask it globally and someone says, oh, my  
2 mother is going to have surgery tomorrow, well, then someone  
3 else starts thinking about doctor's appointments and it just  
4 snowballs from there. And so I'd really prefer that we ask  
5 a scheduling question.

6 Now, do you have any more suggestions about that or  
7 does anyone object to it?

8 MR. EWING: No. I don't -- I don't have any  
9 objection, but I do want to make -- make an observation  
10 about the length of the trial. I certainly think we can  
11 finish it in two or three weeks. I do, Your Honor.

12 I believe I read a clipping one day, this was on March  
13 20th, and they were quoting Mr. Guthrie as saying he had  
14 discussed the possibility of the president testifying with  
15 Mr. Kendal. And, obviously, that -- there was a lot of voir  
16 dire in the other trial. There was a lot of time spent on  
17 the president, if he's called as a witness. Obviously,  
18 there was a -- in that case, there was a subpoena issued for  
19 him. Ultimately, the judge decided, yes, there could be a  
20 subpoena, but then he didn't have to come here. They had to  
21 take out -- time out from the trial to go up there. And I  
22 don't -- I -- I -- that might factor in if they've got any  
23 ideas about that.

24 THE COURT: Yeah, because this trial that's going  
25 on now is a lot longer than the one we're going to have.

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1 And so if you-all intend to subpoena Mr. Clinton, I think  
2 you better hurry up and get around to it, because it's  
3 really going to be -- the motions are going to start  
4 flying --

5 MR. GUTHRIE: Your Honor --

6 THE COURT: -- if you do.

7 MR. GUTHRIE: -- it is my intention to subpoena  
8 President Clinton to the trial. He is the one person who  
9 can, without equivocation, testify as to the reasons why  
10 Herby Branscum was appointed to the highway commission. One  
11 of the very explicit statements, allegations, contained in  
12 the indictment is the appointment of Mr. Branscum by -- to  
13 the highway commission by then-Governor Clinton. And so it  
14 is my intention to subpoena him to the trial.

15 The report that Mr. Ewing referred to is quite  
16 correct. I have had preliminary discussions with David  
17 Kendal, who is the president's lawyer, concerning the  
18 subpoena. And, frankly, we have been endeavoring to get  
19 through the Rule 16 discovery before we made a final  
20 decision. But now that I have seen what they have provided  
21 to us at this point, it is my intention to subpoena the  
22 president.

23 THE COURT: All right. Well, I want you to get  
24 right on it, so we can find out whether he's going to file a  
25 motion in opposition of that subpoena or a motion to quash

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1 or a motion to appear by video deposition. There won't be a  
2 lot of flexibility in terms of this trial. We just have a  
3 two or three-week window. And I would like to confine the  
4 taking of evidence before the jury to that two or three-week  
5 window. And this means that you'll have to do it right  
6 away. And I'd like for you to accommodate us that way so we  
7 won't have a two or three-week trial without the president's  
8 testimony and then have to suspend everything, send the jury  
9 out on their business and have them come back in two or  
10 three months so we can hear the president. And it's a  
11 problem, but just do it. Get on it, if you would, please.  
12 That's all I can tell you.

13 Incidentally, my office has been getting a whole lot  
14 of calls from the press because somehow -- and a friend from  
15 Washington called, he didn't tell me this, but told my  
16 husband that it's been in the -- he's read it twice in  
17 Washington that on May 16, I'm going to be conducting the  
18 civil case, the Paula Corbin Jones versus William Jefferson  
19 Clinton case unless the president's lawyers, Mr. Clinton's  
20 lawyers, fill a petition for cert. Now, that's just wrong.  
21 The mandate will issue on that date if the president and his  
22 lawyers have not petitioned for certiorari. But that  
23 doesn't mean we're going to trial on that day. That means  
24 I'm going to have jurisdiction --

25 MR. EWING: Jurisdiction.

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1           THE COURT: -- of the case. And I don't know how  
2 it got -- as if we're all down here and we're going to have  
3 this trial on the 16th of May. That would be quite a shock  
4 to all of us.

5           MR. STARR: It's coming right up.

6           THE COURT: That's right. We have other things  
7 we want to do too, I think.

8           But I just want to make sure that any members of the  
9 press who are in the room -- I just want to make sure you're  
10 not under the impression that that is in fact the case. It  
11 was a misunderstanding. All it means is that this court  
12 will have jurisdiction again. That does not mean that Mr.  
13 Clinton's time has expired, though, to file his petition for  
14 certiorari. It doesn't expire until 90 days after the  
15 appellant court denied his petition for rehearing. So it  
16 just meant the mandate would not issue. They stayed  
17 issuance until the mandate until May 16th, the 8th Circuit  
18 did. Which is fine with me.

19          But I just wanted everyone -- if there are any members  
20 of the press in here who are worried about that or concerned  
21 about it, that's not the case.

22          Now, but as to calling Mr. Clinton as a witness, it's  
23 very clear, he, as a citizen, can be subpoenaed. He is  
24 not -- this is a criminal case, so you don't have to worry  
25 about the limitations on subpoena power, you know, that you

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1 worry about in civil cases. I will stand ready to attempt  
2 to make any rulings that are necessary, but I think because  
3 he does have a busy schedule, it should be accommodated. I  
4 think that you need to consider subpoenaing him now.

5 MR. GUTHRIE: I will -- I -- again, Your Honor, I  
6 have had preliminary discussions with his attorney  
7 concerning the matter, so it's not like this is coming as a  
8 lightening bolt out of the blue to him.

9 THE COURT: In fact, he's testifying by video at  
10 this moment, I believe, downstairs.

11 MR. STARR: That's correct.

12 THE COURT: All right. Now, are there any other  
13 questions about the questionnaire?

14 MR. EWING: Your Honor, I -- I might say this, I  
15 don't -- I heard what Your Honor said about when we're going  
16 to give it to them. I don't know that there will be any  
17 other suggestions for the questionnaire, but we possibly  
18 might have ques -- suggestions for Your Honor to ask.

19 THE COURT: Fine.

20 MR. EWING: I -- I say that because we have a  
21 pending trial right now. I don't know when that trial will  
22 end. I don't know what the result will be and, obviously,  
23 we need -- we'll have to have some question, you realize  
24 this is a separate trial, etc., etc.

25 THE COURT: You can give me questions on the

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1 morning that we pick that jury. Bring them in half an hour  
2 before. I mean, we'll have a pretrial at nine o'clock,  
3 probably. Isn't that right, Sandy?

4 THE CLERK: (Nods head up and down.)

5 THE COURT: The lawyers and the judge get  
6 together. If you'll give them to me, I'll scan them.  
7 Unless there's just a huge, fat book of them, I'd like to  
8 have them more than just that morning -- I mean, just in  
9 advance. But lawyers routinely give me questions to ask.  
10 And what I do is ask the questions to the entire -- again,  
11 globally.

12 Now, I have a script that I follow that I will modify  
13 as a result of the questionnaire. And then I ask the  
14 questions that the lawyers have given me. And I usually  
15 don't ask all of them. I ask the ones I want to ask. I do  
16 my best to ask follow-up questions. Sometimes I don't think  
17 my follow-ups are as good as your., because I don't know the  
18 case the way you do. And for that reason, I give each side  
19 up to ten minutes, and I'll give you a bit more, to ask  
20 follow-up. And my main reason for doing that is that I  
21 don't think I ask good follow-ups. But I don't limit you to  
22 follow-up. I permit you to ask new global questions. And I  
23 will also permit to you ask specific, individual questions  
24 as follow-ups to the written questionnaire.

25 So I feel that I do give the lawyers a good crack at

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1 the jury. I feel that my --

2 Why don't we give them a copy of my script that I  
3 follow in criminal cases. Just give them that.

4 THE CLERK: Okay.

5 THE COURT: And I think Jack and Jim Rhodes --  
6 Jim, have you been in here for a criminal case ever?

7 MR. RHODES: Your Honor, I think right after you  
8 took the bench, I was here.

9 THE COURT: Okay.

10 MR. RHODES: And I can't remember what it was,  
11 Your Honor.

12 THE COURT: Well, I remember that sweet  
13 Ms. Thomas whose husband is still in jail.

14 MR. RHODES: Yes. Yes, Your Honor, that -- that  
15 may be it.

16 THE COURT: She was -- we didn't go to trial on  
17 her, though.

18 (A discussion was held off the record.)

19 THE COURT: Other than that, let's go into the  
20 press and how we're going to conduct this trial from just  
21 a -- I shouldn't say the press, just public interest. Judge  
22 Howard has a bench by the marshal for court personnel, two  
23 or three people can sit on it. And I'm going to do that. I  
24 will also have a place designated for the press. And I will  
25 ask their input as to how it's done.

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1 Do you-all remember how Judge Howard has done it?

2 MR. EWING: Your Honor, the -- I think because of  
3 the press interest in that case, they actually had a -- I  
4 don't know whether they called it a press committee. I know  
5 they had the Democrat Gazette. I think they had all the  
6 TV stations. They -- in other words, everybody wasn't on  
7 the press committee.

8 And I know in his courtroom, the first two rows on  
9 each side -- well, strike that. I think one whole side of  
10 his courtroom was press. The other side, I think the first  
11 row, first two rows, were for the government and/or the  
12 defense. They were reserved. And I think we had four seats  
13 and they had four-something. And then the public could come  
14 in.

15 THE COURT: Uh-huh.

16 MR. EWING: But I know the press had the whole  
17 side and there were actual -- actually where it came down to  
18 how many could come in there, they had some sort of  
19 committee that they utilized that the judge contacted.

20 THE COURT: Well, do you think that's going to be  
21 necessary here? Do you have any feel for that or --

22 MR. EWING: I don't.

23 THE COURT: Mr. Rhodes?

24 MR. RHODES: Your Honor, could I address a  
25 question --

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1 THE COURT: Yeah.

2 MR. RHODES: -- to the Court?

3 THE COURT: Yeah.

4 MR. RHODES: Would it be possible -- and I think  
5 you advise -- suggested this when we were here the last  
6 time. Is it possible we could use Judge Roy's courtroom?  
7 It's much larger. We would have more room for the monitors  
8 and everything. And we went down and looked at it a while  
9 ago and actually talked to, I guess, her  
10 secretary/receptionist. They have one trial set during this  
11 period of time, and she thought perhaps we could exchange.

12 THE COURT: Well, I imagine we could. Do you-all  
13 want to try that? Why don't we call. Why don't we call.  
14 If you all really want that, I'll do it.

15 MR. RHODES: We would have more room.

16 THE COURT: That's fine.

17 MR. EWING: Your Honor, we -- we have no choice.  
18 We're perfectly happy in here, but whatever the Court  
19 wishes.

20 THE COURT: I'm not as comfortable there simply  
21 because I don't work in that courtroom. But do you have any  
22 say, Mr. Guthrie?

23 MR. GUTHRIE: Well, Judge, all I was going to say  
24 is it's my understanding that OIC is planning to use the  
25 same sort of video monitor system they're using in the

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1 Tucker case. And that is a -- the configuration they have  
2 right now in Judge Howard's courtroom involves four  
3 monitors. And it's my understanding that -- that it would  
4 be very cramped to put four monitors in -- in the courtroom  
5 here, to configure it so that Your Honor could see it, the  
6 witness could see it, the jury could see it and then, of  
7 course, so that the attorneys could see the documents. And  
8 this system, as I understand it, is one that actually  
9 transmits by video image the document that's placed on it so  
10 that you can zoom in on it.

11 THE COURT: Yeah. Those are great.

12 MR. GUTHRIE: It would be a great -- it would be  
13 a great tool for both sides.

14 MR. EWING: Well, let me say this. We would have  
15 proposed to use that. We can configure it for this room.  
16 It would be a little more crowded. If I might show Your  
17 Honor just -- in the other courtroom, the jury is here and  
18 there's like a 40-inch TV screen about right here. In his  
19 courtroom, the witness stand, though, is on the other side.  
20 So there's a big monitor on the other side for the witness  
21 and the Court, and then there's a big one, I think, back  
22 there that the -- the public can even see. So here -- there  
23 is room, but Your Honor might have to -- you wouldn't have  
24 this full wall over here.

25 THE COURT: Oh, I make lawyers move stuff all the

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1 time so I can get back in chambers. I know. It's a cramped  
2 courtroom. It is.

3 MR. EWING: We -- we can put it in here.

4 Obviously, there's probably a little more room up there.

5 THE COURT: Well, I'll ask. It's okay with me.  
6 It's a bigger inconvenience, I guess, to my staff and me  
7 than it is to anyone else. And that's fine. That was Judge  
8 Henley's courtroom when he was on the district bench, and I  
9 used go up there and visit his law clerk, Phil Austin.

10 (A discussion was held off the record.)

11 THE COURT: Anyway, we'll go up there if we can.  
12 Let's try to do that. And I think you'd be more  
13 comfortable.

14 (A discussion was held off the record.)

15 Another thing I would like to discuss with you is  
16 something I've mentioned earlier, and I have not changed my  
17 mind, and I want to see what your opinions are. I would  
18 like to limit egress from the courtroom, not ingress. I  
19 think that that's all right, if we have seats, plenty of  
20 seats, any time during a trial, a new person can come in and  
21 sit down as long as that person is orderly and is quiet.

22 But one thing I don't like is some witness to testify  
23 as to something, something newsworthy, and for people to  
24 scramble out of the courtroom, climbing all over each other,  
25 kicking people, kicking furniture, trying to get out to beat

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1 the competitors to the punch. And what I would like to do  
2 is make it clear, in a very nice way, that to keep order in  
3 the courtroom, people are free to come in but they must stay  
4 in until recess, until a recess is declared.

5 And I'm sure there are, you know, certain  
6 circumstances when an emergency, urinary urgency, for  
7 example, might require someone to get up and leave really  
8 quickly. But I would hope that that wouldn't take place  
9 very often. And if it's a reporter trying to beat the  
10 punch, I'll doubt his credibility, or hers. So that's what  
11 I would prefer to do.

12 MR. EWING: While -- while we're on the subject  
13 of the press, I meant to bring this up. I -- I don't know  
14 how this got started up there, but in the other trial there  
15 are a number of reporters who -- who do their computers in  
16 there. I don't -- I don't know why they allowed that, but  
17 it's real nerve-racking.

18 THE COURT: All right. We're not going to let  
19 them do that. And I think I mentioned that at the -- were  
20 you here at the last hearing? Maybe you were.

21 MR. EWING: Yes, Your Honor.

22 THE COURT: Anyway, I mentioned that I was not  
23 going to permit laptop computers because of the click,  
24 click, click. However, our court rules do permit audio  
25 recording. And I will follow our court rules and I'll

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1 permit audio recording, which, of course, is not very  
2 obtrusive. It's just a click here and there and every now  
3 and then someone changes a cassette. Is that agreeable with  
4 you all?

5 MR. STARR: Uh-huh, that's fine.

6 MR. EWING: (Shakes head from side to side.)

7 THE COURT: And I'm going to do an order  
8 outlining all of this stuff in advance. I'm not just  
9 talking to people who are here today.

10 Now, are there any other suggestions you have? There  
11 will be a section set aside for court personnel and for the  
12 press.

13 Go ahead. Yes, Mr. Jaso.

14 MR. JASO: Your Honor, one additional thing that  
15 Judge Howard has asked his deputies consistently to remind  
16 the press is that interviews not be given in the courtroom  
17 or on this floor. I think in fact even yesterday, the  
18 deputy marshal reminded the press of that since the national  
19 press is here for the president's tape.

20 THE COURT: No interviews in the courtroom or on  
21 the floor?

22 MR. JASO: Regardless of whether the Court is or  
23 is not in session. I believe that that comports with the  
24 local rules.

25 THE COURT: All right. I think you're right.

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1 They do it all the time in the school case out here. They  
2 leave me alone so I let them do it. And they used to have  
3 cameras out in the stairwell -- or in the elevator well, but  
4 they don't anymore. It's been eliminated.

5 All right. Any other thing that you can think of? We  
6 don't have to decide all of this now, but I'm just trying to  
7 prepare.

8 Yes, Mr. Guthrie?

9 MR. GUTHRIE: Your Honor, does the prohibition  
10 against computers apply to the lawyers? Can we have laptops  
11 and notebook computers?

12 THE COURT: It does not apply to you.

13 MR. GUTHRIE: Okay. Thank you.

14 THE COURT: You may have them. It's just that  
15 it's distracting with a whole lot of people clicking away on  
16 them. And I have no qualms at all about a lawyer using it  
17 in his case. I mean, as long as you're not doing something  
18 like playing solitaire on it. And I doubt that you would  
19 be.

20 Anything else?

21 MR. LASSITER: There's a matter from the last  
22 hearing I'd like to revisit, Your Honor.

23 THE COURT: All right.

24 MR. LASSITER: The last hearing, as we were  
25 leaving the -- the matter of the Rule 17(c) subpoenas,

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1 Mr. Mayopoulos asked me if I would -- if we would agree to  
2 give Independent Counsel copies of whatever documents we  
3 copied pursuant to the 17(c) subpoena. And I agreed to do  
4 that at the time. And I don't think I thought through that  
5 very well when I agreed to do that.

6 The reason being, if we reviewed, let's say, 2,000  
7 documents, and I only choose to copy five or six of those  
8 documents, if I were in a civil case, that might be  
9 protected by work product, if I telegraphed the other side  
10 what I was -- wanted to see what was important to me, what  
11 areas I was researching or investigating. So I'd like to  
12 revisit that.

13 THE COURT: Assuming that I don't quash the  
14 subpoena. I think.

15 MR. LASSITER: Well, we -- we have some subpoenas  
16 of issue that --

17 THE COURT: Oh. All right then.

18 MR. LASSITER: -- that there's not any problem  
19 with, that there's been no motion to quash. As recently as  
20 yesterday, we sat down and looked at certain documents on  
21 one of those subpoenas. OIC knows -- I think they know what  
22 subpoenas we've issued on the 17(c) and I -- documents  
23 that -- that we reviewed under those subpoenas would be  
24 readily available to them under similar subpoena. And I  
25 would ask that the Court not require us to furnish to them

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1 copies of those documents that we pulled.

2 THE COURT: All right. I think tit for tat is  
3 fine. You're not getting specific documents. In other  
4 words, they're not culling their documents for you at this  
5 time, are they?

6 MR. LASSITER: No.

7 THE COURT: Well, you don't have to cull yours  
8 for them either.

9 If you-all will tell Mr. Lassiter explicitly what  
10 documents you're going to use and hand them over to him,  
11 then I will require him to do the same for you, Mr. Ewing.

12 MR. EWING: Okay.

13 THE COURT: And that's -- and this is not a civil  
14 case. If it were a civil case, I would make everyone come  
15 out with -- you know, with their stuff.

16 MR. LASSITER: Thank you, Your Honor.

17 THE COURT: Or treat both sides the same. But  
18 that's what I'm trying to do. And I will give careful  
19 consideration. I'm just not through researching that for  
20 Mr. Bristow. When I first got it, I thought, oh, well, this  
21 is attorney work product or privileged or Jencks Act, and  
22 now I'm just not sure about any of that.

23 MR. EWING: Your Honor, let me -- let me just, as  
24 far as Rule 17(c), if I might read part of this.

25 THE COURT: Yes, sir.

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1 MR. EWING: Obviously, subpoena may command a  
2 person to produce books, papers, documents. The court may  
3 direct that they be produced at a time prior to the trial or  
4 prior to the time when they're to be offered in evidence,  
5 and may, upon their production, permit the books, papers and  
6 documents or portions thereof to be inspected by the parties  
7 and their attorneys. And as I understand Your Honor, you're  
8 saying that they do not have to let us inspect the documents  
9 unless it's a reciprocal discovery, where they're going  
10 to --

11 MR. GUTHRIE: No.

12 THE COURT: No, no. No, that's not it. They  
13 can -- Mr. Lassiter is prepared, I think -- he's saying --  
14 first of all, he's saying that you can subpoena them, and  
15 that's true. And I imagine Mr. Lassiter would also let you  
16 see all 2,000 pages. What he doesn't want to do is tell you  
17 what eight or ten pages he's going to use out of the 2,000.

18 MR. EWING: That's fine.

19 THE COURT: And so if you want to use his  
20 subpoena to look at those papers, I guess you can under that  
21 rule. His concern was not that, though. His concern was  
22 that he had agreed to copy you on anything he got through  
23 that. And it's 2,000 pages, which is a lot to copy. And so  
24 he's backtracking on that agreement because he doesn't want  
25 to single out for you and reveal to you the ones he's going

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1 to use. And since I'm not making you reveal to him the ones  
2 you're going to use -- we went through that the last time --  
3 I'm not going to make him do it either.

4 Now, of course there's nothing in the Rules of  
5 Criminal Procedure that would prohibit you from telling him  
6 and would prohibit him from telling you. And, frankly,  
7 that's what I'm used to. I've learned a lot about criminal  
8 procedure since I got this case. You have your reasons and  
9 you can follow the rules, and I will try to follow the rules  
10 too.

11 But the U.S. Attorneys office usually turns all of  
12 that stuff over. I've never --

13 MR. EWING: Well --

14 THE COURT: They do. They just turn it over. We  
15 have all these canned motions for Jencks Act material and  
16 other stuff, and the government always responds they can  
17 have it, come and get it. But you're following the rules.  
18 You're playing hardball, fine. Fine with me. I'll play by  
19 the rules too, make them play by the rules.

20 MR. EWING: Your Honor, I don't -- we -- we'll  
21 have no problem. I -- I didn't understand it, but if  
22 they'll let us know when they get it, we'll come look at it.

23 THE COURT: Am I not correct, Mr. Lassiter?  
24 You're not going to make him subpoena them, you're going to  
25 let him see all these documents you've gotten pursuant to

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1 your subpoena? But you do not have to tell him which ones  
2 you're going to use.

3 MR. LASSITER: Yes, Your Honor.

4 MR. EWING: Okay.

5 THE COURT: You can let him figure that out, just  
6 as you can figure out what he's going to use.

7 Anything else?

8 MR. GUTHRIE: Your Honor, I have just a point of  
9 clarification on this last issue. The -- the various  
10 subpoenas that we're talking about deal with documents that  
11 were subpoenaed from the Arkansas Bank Department. Those  
12 documents are somewhat voluminous, as Mr. Lassiter  
13 indicated. And the documents that are covered by the  
14 subpoena, we certainly can advise them as to where those  
15 documents are at the Arkansas Bank Department, so that they  
16 can go in and they can look at those documents that they  
17 have produced for us over there to decide what they want to  
18 have copied. I just wanted to make sure that the Court  
19 understood that that -- that's what we were suggesting.

20 THE COURT: Well, the rule says that you're to  
21 let counsel review the documents. And so I want you, by  
22 virtue of the subpoena you have issued, to provide access to  
23 OIC to those documents.

24 MR. GUTHRIE: Well, and what I was trying to  
25 clarify with the Court is if we arranged for them to see the

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1 documents that have been produced at -- what we did is we  
2 went over --

3 THE COURT: Sounds good to me.

4 MR. GUTHRIE: Okay. Fine.

5 THE COURT: If they don't object. They're here.

6 MR. EWING: Well, my only objection is, I think  
7 the rule says if you -- if they subpoena the documents, they  
8 get the documents, they let us see them. They don't get  
9 to -- they don't just get to say we subpoenaed General  
10 Motors and you can go over to General Motor's plant and look  
11 for yourself.

12 THE COURT: No.

13 MR. LASSITER: I will go over to the bank board  
14 with you --

15 MR. EWING: Yeah. We have -- we have --

16 THE COURT: And --

17 MR. LASSITER: -- and -- and have them [all those  
18 documents.

19 MR. EWING: Sure.

20 THE COURT: The ones that are subject to the  
21 subpoena, they will have to point out --

22 MR. EWING: Okay.

23 THE COURT: -- which ones. You don't have to go  
24 through every record, but the ones that are subject to the  
25 subpoena. What he's not going to have to do is reveal, at

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1 point, the individual ones that he's going to use. And just  
2 as you, Mr. Ewing, did not have to reveal in the bill of  
3 particulars -- remember the motion on the bill of  
4 particulars? And I can't remember what else. There was a  
5 motion with respect to whether OIC had authority, proper  
6 authority to subpoena certain records. And, you know, I  
7 said, well, we're not going to get into these specific  
8 documents.

9 So I have not required OIC to reveal these specific  
10 documents. It would be extremely helpful to the defendants  
11 if they knew about them. Just as I'm sure it would be  
12 extremely helpful to you if you knew which ones they intend  
13 to use.

14 But we can all just be here and be ready for  
15 surprises. I like surprises.

16 MR. EWING: Well, Your Honor, this is not a  
17 matter of surprise. They -- we will have -- we will mark  
18 documents. I mean, we're not going to -- it's not going to  
19 be a surprise.

20 THE COURT: I realize that.

21 MR. EWING: We're going to move this along.

22 THE COURT: But you're not going to exchange  
23 anything until the 28th and -- but you're not suggesting  
24 that I'm letting Mr. Lassiter surprise you and not vice  
25 versa, are you?

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1 MR. EWING: You know, I'm used to surprises.

2 THE COURT: Well, and --

3 MR. EWING: I -- I'm -- quite frankly, I don't  
4 think this bank department thing is any big deal. I mean,  
5 we're -- you know.

6 THE COURT: Well, but you understand my ruling?

7 MR. EWING: Yes, ma'am.

8 THE COURT: He's going to show you the documents  
9 that he got by virtue of the subpoena. And he can't show  
10 you the whole room, unless the whole room is what he got by  
11 virtue --

12 MR. EWING: Right.

13 THE COURT: -- of the subpoena. But he's not  
14 going to be required to say, well, this is what I want and  
15 this and this, because that would reveal to you his defense  
16 strategy.

17 MR. EWING: I understand.

18 THE COURT: And I believe that is consistent with  
19 my earlier ruling protecting you.

20 MR. GUTHRIE: Well, Your Honor --

21 MR. EWING: I understand.

22 MR. GUTHRIE: I'm sorry. In a -- in a similar  
23 vein, Your Honor, just so that I understand the Court's view  
24 of reciprocal discovery under Rule 16, at this point, quite  
25 frankly, there are going to be very limited documents, if

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1 any, that -- that I anticipate we will introduce in our case  
2 in chief that are not already in possession of the  
3 government.

4 Certainly, it has always been my experience that  
5 there's no need for me to reproduce back to the government  
6 documents they already have. And I just wanted to confirm  
7 that that's also the Court's view.

8 THE COURT: I'm not going to say that because I  
9 don't want -- I mean, certainly, in some circumstances that  
10 could be true, but -- and this is a criminal case, not a  
11 civil. But if you claim that you don't have a document but  
12 the government does, the government might not know whether  
13 it has it or not.

14 MR. GUTHRIE: No. What I'm suggesting -- I  
15 didn't very artfully phrase what I was trying to say. What  
16 I'm saying is that if we receive documents pursuant to Rule  
17 16 discovery from the government --

18 THE COURT: Uh-huh.

19 MR. GUTHRIE: -- and those documents -- among  
20 those documents that we receive are documents that we may  
21 later want to introduce in -- in our case, there's certainly  
22 no need to -- to -- to go back and reproduce the  
23 government's own documents to them. You see what I'm  
24 saying?

25 THE COURT: Well --

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1           MR. GUTHRIE: In other words, it would be  
2 documents that I would actually -- that I would actually  
3 receive from the government in Rule 16 discovery.

4           THE COURT: Well, you'd better at least tell the  
5 government. I'm not going to give you much leeway here, Mr.  
6 Guthrie, because, first of all, you'd have to at least tell  
7 the government what -- when you reciprocate, what documents  
8 you will designate. And sometimes it can be very confusing,  
9 whether you're talking about just the front page or the back  
10 page, or whether you're talking about the main document or  
11 the main document plus the attachments that were attached at  
12 some stage during these transactions but aren't attached  
13 maybe right now.

14          So I'm not going to give you a whole lot of breathing  
15 room there. Just from what you've said so far, fine. But  
16 there are a lot of pitfalls.

17          We were just in here the other day where something  
18 like that happened. It involved our TRO hearing, remember  
19 the -- and they produced the document and they said that is  
20 not the document we provided them. And it turned out that  
21 it was, but there was an attachment to it. And I don't  
22 remember at the time whether the attachment meant anything  
23 or not, but you have to be very careful --

24          MR. GUTHRIE: Right.

25          THE COURT: -- when you rely on this kind of

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1 thing.

2 MR. GUTHRIE: Well, these --

3 THE COURT: And I don't feel comfortable doing it  
4 by just saying, well, these are the documents we're going to  
5 rely on, and since you already have them, we're not going to  
6 provide you copies of them.

7 MR. GUTHRIE: Well, these would be documents. So  
8 that it's clear, they have employed a numbering system on  
9 their documents. The documents would be in the category  
10 I'm -- I'm referring to would be documents that have one of  
11 their numbers on -- actually on it. So it would be clear  
12 that it would be documents we received from them in Rule 16  
13 discovery.

14 THE COURT: Well --

15 MR. GUTHRIE: It just seems like a needless --  
16 you know, of course, since they're not having to reveal to  
17 us the specific documents that they're producing, obviously,  
18 if we go back and start selecting out of 10,000 documents we  
19 receive from them, the ones that we're going to introduce,  
20 we're giving them the benefit of getting an itemized listing  
21 of our evidence, whereas the Court has already ruled that  
22 they don't have to do that with us. So I was just trying to  
23 clarify that with the Court.

24 The other -- the other thing is that it's always been  
25 my experience that, you know, impeachment evidence is not

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1 something subject to -- to reciprocal discovery. And so  
2 anything that impeaches a witness's testimony is not  
3 something that is part of the Rule 16 reciprocal discovery.  
4 And, again, I just wanted to make certain that's the Court's  
5 view.

6 MR. EWING: I think that's right, Your Honor.

7 THE COURT: Well, I was trying to think. The  
8 Jencks Act is subject now to reciprocal, isn't it, or not?  
9 Or is it just government?

10 MR. EWING: Well, it once -- if a defense witness  
11 testifies, we make a demand --

12 MR. GUTHRIE: Sure.

13 THE COURT: Okay. Yeah. That's --

14 MR. EWING: -- (simultaneous) reverse Jencks Act.

15 MR. GUTHRIE: Yeah. I'm not referring to Jencks.  
16 We certainly would -- upon proper demand, if we have any  
17 prior statements, we certainly would tender those in cross.

18 MR. EWING: Sometimes.

19 THE COURT: Because that -- I think there was a  
20 bit -- again, this is my first venture in this really. But  
21 as I recall, for a while there was some concern, confusion  
22 about whether there was reciprocal under the Jencks, but now  
23 there is. I mean, Congress has said there is, prior  
24 statement of witnesses. But as far as impeachment is  
25 concerned, I'll just defer to you-all, if that's the case.

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1 I'd have to research that.

2 MR. EWING: That's -- that's what the rule.

3 THE COURT: All right.

4 MR. GUTHRIE: Well, again, just to clarify that,  
5 Your Honor, obviously, we -- as -- as we've indicated, I  
6 think in filings by Mr. Lassiter, the government's star  
7 witness in this case is an individual this Court is well  
8 familiar with, Neal Ainley. And Mr. Ainley has consistently  
9 refused to be interviewed by our investigators. Obviously,  
10 that puts us at -- at a position of having to guess and  
11 speculate as to what he will actually testify to.

12 So until we actually hear his testimony, we -- it's  
13 very difficult for us to form -- and the other witnesses  
14 they bring may bring. It's difficult for us to formulate  
15 precisely what it is that we will bringing forward in terms  
16 of defensive material.

17 Obviously, if we call a witness and we put them on the  
18 stand and we have some sort of a prior statement of that  
19 witness, at that point, we certainly believe that the Jencks  
20 Act, upon proper demand, would require us to turn that over.  
21 But that certainly, I don't believe, would require us by the  
22 28th to try to turn over any statements that we have  
23 received from witnesses that -- that potentially may be  
24 witnesses. I mean, that's not what the Court is suggesting,  
25 is it?

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1 THE COURT: No.

2 MR. GUTHRIE: Okay. I just wanted to clarify  
3 that.

4 THE COURT: No, I'm not.

5 MR. GUTHRIE: Okay. One final -- if there's  
6 nothing else on this, I have one final matter I'd like to  
7 address the Court on.

8 THE COURT: Okay.

9 MR. GUTHRIE: Your Honor, as you may know from  
10 press reports, a special committee that has been empowered  
11 by the Senate to investigate Whitewater is chaired by  
12 Senator D'Amato, recently issued five subpoenas to  
13 individuals, that are individuals that some of whom may be  
14 witnesses in this case, concerning matters that are covered  
15 by the allegations in this indictment.

16 The subpoenas that were issued by Senator D'Amato were  
17 record subpoenas only. They went to Perry County Bank, the  
18 White House, I believe Bruce Lindsey got one and a couple of  
19 other individuals.

20 This effort by Senator D'Amato to subpoena these  
21 documents on the very eve of our trial causes me a great  
22 deal of concern. Now, obviously, if Senator D'Amato goes no  
23 further and there are -- there is no effort to subpoena  
24 witnesses that could be witnesses in our trial, or to have  
25 public hearings and bring forth before the Senate

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1 individuals who will discuss the events that are contained  
2 in this indictment with Senator D'Amato editorializing on  
3 what he thinks this may mean or speculating on what he  
4 thinks this may mean, that we -- this type of scenario  
5 causes me a great deal of concern about the poisoning effect  
6 it could have on our jury panel.

7 Now, at this point, I don't see a problem, because at  
8 this point, there have only been documents that have been  
9 brought before the committee. However, I wanted the Court  
10 to be aware of this activity if it was not. And I wanted  
11 the Court to be aware of my concern, my grave concern about  
12 the ability of -- of my client to receive a fair trial if  
13 Mr. -- if Senator D'Amato chooses to go forward with  
14 subpoenaing witnesses who very well could be witnesses  
15 discussing these very allegations contained in the  
16 indictment.

17 Again, it's -- it's on the eve of our trial. Senator  
18 D'Amato has had the authority, in his committee, to look at  
19 these matters since the committee went into existence.

20 THE COURT: Well, all you can do is express your  
21 concern to the Court. I have no jurisdiction to enjoin  
22 Senator D'Amato from exercising his subpoena power and from  
23 conducting hearings. And I don't have any -- that's all I  
24 can say. And when we pick this jury, I can ask during voir  
25 dire, as you may ask, whether they are familiar with any

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United States Court Reporter

1 special committees that are investigating what we commonly  
2 call Whitewater. And that's all -- and what do they know  
3 about these hearings and have they been keeping up with  
4 them, do they have any opinion with respect to the guilt or  
5 innocence of the defendants before the court today as a  
6 result of those hearings. I don't know what else to do for  
7 you.

8 MR. GUTHRIE: Well, I simply wanted to bring it  
9 to the Court's attention, if you were not aware that this  
10 was happening, because, obviously, depending on the tone and  
11 tenor of the hearings conducted by Senator D'Amato, since he  
12 would be discussing some of the very events contained in  
13 this indictment, it would be extremely prejudicial and --  
14 and could get to the point to where we would be put in  
15 the -- the undesirable position of having to come to the  
16 Court and ask for a continuance. And I -- I wanted you to  
17 be aware of this development.

18 I'm not suggesting a remedy, I'm not asking for a  
19 remedy, I'm simply sharing with the Court this, in the event  
20 that you did not know about it, in expressing the concerns  
21 that I've -- I've outlined.

22 THE COURT: Well, I was aware of it. I didn't  
23 know that he had had any hearings on it. I read about the  
24 subpoenas in the Arkansas Democrat and the Wall Street  
25 Journal, but I was not aware of any testimony that had

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1     been taken.

2             MR. EWING: Your Honor, let -- let me say this,  
3     and I know there -- the other trial, we've had the same  
4     problem. I mean, we -- we did not want -- they wanted to  
5     subpoena David Hale, Jim McDougal, Jim Guy Tucker, I think  
6     even -- might have even issued a subpoenaed for the  
7     defendants. We actually wrote letters in the other trial,  
8     you know, you can't subpoena the defendants. I mean, you  
9     know, this is not fair, and in fact, made a showing of that  
10    to Judge Howard.

11            It is a separate branch of government. They -- they  
12    do have duties. From time to time, the committee has  
13    communicated to us will it hinder or impede your  
14    investigation if we do x, y and z. In fact, we have  
15    communicated, because they -- they talked about subpoenaing,  
16    I think, Mr. Branscum and Mr. Hill. And -- and we advised  
17    them, you can't do that.

18            So we're aware that they have talked about this. In  
19    fact, it's in the paper, the Senate committee, the  
20    Whitewater committee went out and had a banking committee,  
21    but one of the things it said they were going to look at is  
22    the Perry County Bank's role in the Clinton 1990  
23    gubernatorial campaign.

24            So from our standpoint, we don't want them doing that.  
25    The -- I'll say this, our trial is set to start June 17th.

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1 As far as I know right now, the committee expires on June  
2 14th. Hopefully, they will have enough business of other  
3 nature where they won't be insistent on this. But -- but  
4 we -- you know, we have a concern, obviously. But I think,  
5 obviously, in the voir dire, you can cover this, because  
6 they did issue a report many months ago. I think when they  
7 were trying to extend the committee and they actually had a  
8 report to the effect we've been hindered because four people  
9 have indicated they would take the Fifth Amendment, Chris  
10 Wade, Rosalie Wade, Herby Branscum and Rob Hill. This was  
11 in a public report. This was in the media. I don't know if  
12 any jurors would have seen that down here, but I guess the  
13 question is, obviously, if you ask a juror, Did you read  
14 that Mr. Branscum was going to take the Fifth Amendment, I  
15 mean that's not good -- you know, it's more, have you read  
16 anything about this, etc. So --

17 THE COURT: Well, I am concerned --

18 MR. EWING: -- we're -- we're against it,  
19 obviously.

20 THE COURT: All right. Well, I want you to  
21 understand, Mr. -- I know that OIC understands this and I  
22 assume Mr. Guthrie and the defendants understand, I have no  
23 authority. People think federal judges just have all the  
24 power in the world. I have no authority to keep Senator  
25 D'Amato from conducting his hearings.

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1           If this so interferes with your right to a fair trial  
2 and you establish that, we will give you a continuance.

3           My own experience, however, with respect to jurors  
4 that we draw -- and this is true particularly with jurors  
5 outside central Arkansas. And we're not going to have that  
6 kind of panel. We're going to have a panel from central  
7 Arkansas -- they don't read those newspapers very much.  
8 Sometimes they say they do, but they really don't. And they  
9 oftentimes won't have a clue.

10          I mean, they're tired of reading about Senator D'Amato  
11 and they're tired of seeing him on TV, and they just express  
12 disgust. I mean, that's been my observation as a citizen,  
13 and to an extent, as a judge as well. Because, frequently,  
14 things have come up in picking a jury, and I'll think a lot  
15 of these people will have heard of this case, and maybe one  
16 in the whole room has. They forget. They have their own  
17 lives to live.

18          Down here in the our community in Arkansas, we're all  
19 kind of like, as one of my law clerks said, it's kind of  
20 like we're inside the beltway. We're our own beltway. We  
21 know what's happening and we read these news publications  
22 and we watch the political programs on television, but a lot  
23 of these people just do not. I mean we do. And we know  
24 what you all are doing, or not all. We know what the press  
25 says you're doing. But we -- you know.

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1 MR. EWING: Your Honor, if I could make two  
2 points. Number one, the press doesn't always know what  
3 we're doing.

4 THE COURT: Well, I know. I know. I shouldn't  
5 have said that. I said we know what the press says you're  
6 doing.

7 MR. EWING: I would say, Your Honor, I know in --  
8 in the other case, Judge Howard expressed concerns about  
9 this whole matter about subpoenaing witnesses and  
10 defendants, and we actually communicated by letter to the  
11 Senate when they were pressing to get certain witnesses. We  
12 said not only do we have a concern, but the Court has  
13 expressed a concern. And we would be glad, if -- if the  
14 occasion arise, to communicate that, that -- that we have a  
15 trial pending that's coming up and there's a concern by all  
16 parties that --

17 THE COURT: Well, you may tell the Senator that  
18 this Court is concerned.

19 MR. EWING: Okay.

20 THE COURT: You may certainly do that. And I  
21 will very carefully consider any motions for a continuance  
22 if the defendants persuade me that they cannot get a fair  
23 trial.

24 MR. GUTHRIE: And, Your Honor, I would also urge  
25 the Court to keep an open mind on -- I understand what you

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1 said about no jurisdiction, but this is -- this is a very  
2 unusual situation, and you have coming head to head in  
3 direct conflict with each other the defendants' right to a  
4 fair trial and the needs of an independent branch of  
5 government. And it is a very unusual situation. It's a  
6 very unique situation.

7 The reason I said I wasn't suggesting any sort of a  
8 remedy to the Court, only expressing my concern, is there  
9 may very well be some sort of remedy, but it's something  
10 that my preliminary research indicates that this is a unique  
11 issue that -- that I can't find where you have a parallel  
12 Senate investigation where a senator chooses to -- to  
13 subpoena witnesses in an upcoming criminal case to discuss  
14 the criminal case. It's -- it's -- I can't find anything  
15 where a senator has ever had the audacity to do that.

16 THE COURT: Well, Mr. Guthrie, let me tell you  
17 this, I already have the president in court in a civil case,  
18 and I don't want to get the Senate in my court as well. And  
19 so I think -- and I have the school district everyone thinks  
20 I'm running, which I'm not. I would just as soon, you know,  
21 be a regular judge. And I don't think you can anticipate my  
22 interfering with Senator D'Amato's investigation. That does  
23 not mean, however, that you cannot move for a continuance if  
24 you believe that your clients cannot receive a fair trial --

25 MR. GUTHRIE: Thank you very much, Your Honor.

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1 THE COURT: -- as a result of his activities.  
2 That's a different matter.

3 MR. STARR: Your Honor, if I may be heard. I  
4 understand full well the concerns that have been expressed,  
5 and I think that the Court has indicated its jurisdictional  
6 limitations, in light of our system of government, with  
7 there being a coordinate branch of government, the Article I  
8 branch, which can do as it -- as it seeks to do.

9 There are indeed measures and remedies that can be  
10 appropriately invoked and the -- entrusted to the Court's  
11 discretion.

12 The point that I did want to make is that we have been  
13 steadfast in our office and being mindful of the duties and  
14 the fair administration of justice for there to be a fair  
15 trial. And I want to reassure the Court that we will  
16 rearticulate those concerns to the United States Senate,  
17 which then takes that and its discretion into account.

18 THE COURT: May I suggest this too, as you know  
19 know, Senator D'Amato, as you mentioned, was going to take  
20 this matter over to the banking committee. And now that the  
21 Senate has reestablished the special Whitewater committee, I  
22 guess it's in the Whitewater committee now. But this is  
23 properly -- this matter of banking is properly within the  
24 jurisdiction of inquiry of the banking committee.

25 I remember reading that if the special Whitewater

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1 committee were not extended, then Senator D'Amato could not  
2 take everything he would like to take to the banking  
3 committee.

4       You might suggest to the senator that he not have  
5 anything to do with Mr. Branscum and Mr. Hill and the Perry  
6 County Bank in the Whitewater committee prior to its  
7 expiration on June 14th, that if he wishes to look into  
8 these matters, that he just do so later, as chairman of the  
9 Senate banking committee.

10       Now, there's nothing wrong with that type of  
11 suggestion. I don't want to be making it -- I mean, I am  
12 making it on the record, but I'm not going to make it  
13 directly to him. It's my suggestion that Mr. Starr make it  
14 to him, because I know that you have in the past -- at least  
15 I've read in the newspaper that in the past you have tried  
16 to persuade him to postpone some of his investigations  
17 pending your investigation and pending the issuance of  
18 trials -- or indictments -- excuse me -- the issuance of  
19 indictments in trial. And as a good lawyer, I know that's  
20 what you would want to do. And perhaps you could suggest to  
21 him that this matter is peculiarly within the jurisdiction  
22 of the banking committee, at least I would think it would  
23 be, and just to hold off, to wait until the fall.

24       MR. STARR: Well, Your Honor, I will certainly  
25 consider that. I will say much more broadly that

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1 heretofore, at least, the Senate has been, in large measure,  
2 responsive to the concerns of the administration of justice.  
3 And I hope that we will be able to muddle through in -- in  
4 this matter as well. But I do certainly take fully the  
5 concerns about the fair administration of justice.

6 THE COURT: Well, and all I can do -- and, of  
7 course, you're much more diplomatic than I probably could be  
8 or would be, if I were in your situation.

9 But my remedy, Mr. Guthrie, are strictly those that  
10 are traditional court remedies, like a continuance, if your  
11 client and if Mr. Hill cannot get a fair trial. That would  
12 be my remedy. My remedy is not to make any attempt,  
13 whatsoever, to reach into those Article I activities and try  
14 to -- you know, they're trying to cut our budget and  
15 everything else. Shoot, I can't do that. We got this  
16 questionnaire from Senator Grassley saying, you know, how  
17 many judicial conferences do you go to, and how much of a  
18 break do you take. They've been looking at us very  
19 carefully. And I don't want them messing in my business,  
20 and I'm not going to mess in theirs, because you're talking  
21 about really -- really dangerous conflict between co-equal  
22 branches. And --

23 MR. GUTHRIE: Oh, I understand.

24 THE COURT: And when you hold the purse strings,  
25 there's nothing real equal, or there's nothing very equal

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1 about that.

2 MR. STARR: But we will convey these concerns,  
3 Your Honor.

4 THE COURT: All right. Thank you. And that's  
5 all we can do. You're not without a remedy. You can come  
6 here and say dismiss the indictment, it's impossible for  
7 them to get a fair trial. You can ask for a continuance  
8 until it's all blown over. There are any number of things  
9 you can do. But put out of your mind asking me to somehow  
10 contact Senator D'Amato, or doing anything that might stir  
11 his wrath. It would not work. I don't have jurisdiction.  
12 I want to stick to my own bailiwick, and you can get relief  
13 within in. That's the way I look at it.

14 I guess we're through, aren't we?

15 MR. STARR: Yes.

16 THE COURT: Thank you. Court's in recess.

17 (Court recessed at 3:18 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

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C E R T I F I C A T E

I, LOIS M. LAMBERT, Official Court Reporter, do hereby certify that the foregoing is a true and accurate and corrected transcription of the proceedings in the above-entitled cause.

WITNESS MY HAND this 21st day of May, 1996.

Lois M. Lambert

LOIS M. LAMBERT, CCR

Lois M. Lambert  
United States Court Reporter



## Office of the Independent Counsel

Two Financial Centre  
10825 Financial Centre Parkway, Suite 134  
Little Rock, Arkansas 72211  
(501) 221-8700  
Fax (501) 221-8707

May 13, 1996

The Honorable Alfonse M. D'Amato  
The Honorable Paul S. Sarbanes  
Committee on Banking, Housing and Urban Affairs  
United States Senate  
Washington, D.C. 20510-6075

Dear Chairman D'Amato and Senator Sarbanes:

During pretrial proceedings last week, counsel for the defendants in United States v. Herby Branscum, Jr. and Robert M. Hill raised their concerns with Judge Susan Webber Wright that further activity by the Senate Special Committee in connection with its investigation into Perry County Bank could create prejudicial pretrial publicity and impinge on the defendants' ability to receive a fair trial. During the course of the colloquy we informed Judge Wright that we have previously communicated such concerns to the Committee, both orally and in writing. See, e.g., Letter to the Senate Special Committee from John D. Bates, Deputy Independent Counsel, dated April 30, 1996; Letter to Chairman Alfonse D'Amato and Senator Paul S. Sarbanes, Committee on Banking, Housing and Urban Affairs, from Kenneth W. Starr, Independent Counsel, dated September 27, 1995. We also informed Judge Wright that Judge George Howard, Jr. had raised similar concerns prior to the trial of United States v. James E. McDougal, et al. There, as you recall, the Committee accommodated Judge Howard's concerns by agreeing neither to call the defendants to testify at public hearings, nor to seek the enforcement of subpoenas duces tecum it had issued to the defendants, prior to the conclusion of trial.

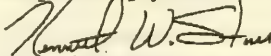
Counsel for Mr. Branscum focused on the potential prejudice which could ensue if the Committee requires any potential trial witnesses to testify at hearings. In response to those concerns, Judge Wright acknowledged the important role of Congress as an independent branch of government, but also expressed her concerns about the fair and impartial administration of justice. Judge Wright further observed that the Senate Banking Committee could conduct an investigation of Perry County Bank after the trial in United States v. Herby Branscum, Jr. and Robert M. Hill is completed, if the Special Committee was unable to do so.

The Honorable Alfonse M. D'Amato, Chairman  
The Honorable Paul S. Sarbanes, Ranking Member  
May 13, 1996  
Page 2

In light of the imminent commencement of trial in United States v. Herby Branscum, Jr. and Robert M. Hill, we are writing to reemphasize our previously stated position that public hearings regarding Perry County Bank prior to the conclusion of trial could interfere with that prosecution.

Specifically, we request that the Committee accommodate these important concerns as it considers the scheduling of remaining hearings. If you have any questions about this matter, please feel free to contact me in Little Rock at (501) 221-8700.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Kenneth W. Starr". The signature is fluid and cursive, with the first name "Kenneth" and last name "Starr" being clearly legible.

Kenneth W. Starr  
Independent Counsel

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN

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PATTY MURRAY, WASHINGTON

## United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

March 28, 1996

By U.S. Mail and Facsimile

John Bates, Esq.

Deputy Independent Counsel

Office Of the Independent Counsel

Suite 490-North

1001 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Dear John:

The Special Committee to Investigate Whitewater Development Corporation and Related Matters hereby seeks to ascertain whether the Office of Independent Counsel's investigation would be hindered or impeded if the Committee examines the following witnesses at an interview, deposition or public hearing. These witnesses have information relevant to the Special Committee's investigation of the lending activities of Perry County Bank, in connection with the 1990 Arkansas gubernatorial election. If the Committee's examination of any of these witnesses would hinder or impede the OIC's investigation, please advise the Committee when you expect that situation to change.

Helen Brandon

Gloria Cabe

Joe Carter

Naomi Chambliss

Glenda Cooper

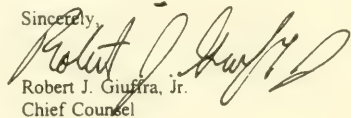
Bruce Lindsey

Charles V. Roland, Sr.

B. Marty Satterfield

If you have any questions, please contact me at 202-224-7212.

Sincerely,


Robert J. Giuffra, Jr.  
Chief Counselcc: Lance Cole, Esq.  
Minority Deputy Special Counsel





**DEPOSITION OF LINDA GARNER  
IN RE: S. RES. 120**

---

**WEDNESDAY, JUNE 12, 1996**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Telephone deposition of LINDA GARNER, called for examination pursuant to notice of deposition, at 5:15 p.m. in Room 640 of the Hart Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, Esq.  
Majority Associate Special Counsel  
STEVEN H. FROMEWICK, Esq.  
Minority Assistant Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

IRVIN B. NATHAN, Esq.  
Arnold & Porter  
555 Twelfth Street, NW  
Washington, DC  
On behalf of the Deponent.

ALSO PRESENT: DAVID BOSSIE

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## P R O C E E D I N G S

(5:15 p.m.)

MR. O'CALLAGHAN: Good afternoon, Ms. Garner. My name is Michael O'Callaghan, Associate Special Counsel for the Special Committee.

With me today are David Bossie, who is a staff member for Senator Faircloth who is a member of the Special Committee.

Also with us today is Steve Fromewick, who is counsel for the minority on the Special Committee.

This deposition is conducted pursuant to Senate Resolution 120. The Resolution establishes a Special Committee administered by the Banking Committee to conduct investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services Incorporated, the Arkansas Development Finance Authority and other related matters.

During the deposition, we'll ask you a series of questions and ask you to testify under oath.

Ms. Garner, do you consent to being sworn

4

over the telephone today?

MS. GARNER: Yes.

MR. O'CALLAGHAN: If you don't understand a question at any time, let us know. We'll be happy to rephrase it.

Also, if you have trouble hearing a question, let us know, and we'll rephrase it as well.

If you need a break at any time, please let us know. We'll be happy to accommodate you.

With us today is a court report who is preparing a record of questions and answers.

The deposition will be treated as Committee confidential. You will have the opportunity to review the transcript and make note of any corrections from the transcription on an errata sheet. We'll send you a copy of that along with the errata sheet.

You may be represented by counsel today.

Are you represented by counsel?

MS. GARNER: Yes.

MR. O'CALLAGHAN: Counsel, could you please state your name and firm affiliation?



1 MR. NATHAN: Yes. My name is Irvin Nathan  
2 with the law firm of Arnold & Porter in Washington,  
3 D.C. Our address is 555 12th Street. I am present  
4 at 555 12th Street in Washington, D.C. for the  
5 deposition, and Ms. Garner is in Little Rock,  
6 Arkansas.

7 MR. O'CALLAGHAN: Objections to the form  
8 of questions will be noted for the record.

9 Counsel may object on grounds of privilege  
10 or relevance, and the Committee Chairman may rule on  
11 objections where the witness refuses to answer a  
12 question.

13 Just may I ask, Mr. Nathan, Ms. Garner, is  
14 there anyone on the phone other than the both of you?

15 MS. GARNER: Not at my office.

16 MR. NATHAN: There's no one here at my  
17 office other than myself and this telephone.

18 MR. O'CALLAGHAN: Could you please swear  
19 the witness?

20 Whereupon,

21 LINDA GARNER

22 was called as a witness herein, and having been first

---

1 duly sworn, was examined and testified as follows:

2 EXAMINATION

3 BY MR. O'CALLAGHAN:

4 Q Ms. Garner, could you please state and  
5 spell your full name for the record?

6 A Linda, L-I-N-D-A, Garner, G-A-R-N-E-R.

7 Q Ms. Garner, did you speak to anyone other  
8 than your counsel prior to this deposition about the  
9 deposition?

10 MR. NATHAN: I'm sure she's spoken to a  
11 lot of people.

12 MR. O'CALLAGHAN: I said about the  
13 deposition.

14 THE WITNESS: No.

15 BY MR. O'CALLAGHAN:

16 Q Did you do anything to prepare for this  
17 deposition?

18 MR. NATHAN: You mean other than  
19 consultation with her counsel?

20 MR. O'CALLAGHAN: Correct.

21 THE WITNESS: No, I did not.

22 BY MR. O'CALLAGHAN:

- 1  
2  
3 Q What is your present business address?  
4 A 111 Center Street, Little Rock, Arkansas  
5 72201.  
6 Q Where are you currently employed?  
7 A Stephens, Inc.  
8 Q What is your position there?  
9 A I'm a Vice President.  
10 Q Are you a vice president of any particular  
11 group in the firm?  
12 A I work in corporate finance.  
13 Q How long have you been with the firm?  
14 A Just over eleven years.  
15 Q Prior to going to Stephens, Inc., were you  
16 employed before that?  
17 A Yes.  
18 Q Where were you employed?  
19 A At what time? Immediately before?  
20 Q Immediately before, yes, ma'am.  
21 A I was doing some work for the Department  
22 of Human Services in Arkansas.
- 

- 1 Q What was your title there?  
2 A I didn't have a title.  
3 Q What type of work did you do?  
4 A The Department was under a plan to  
5 reorganize and I was assisting in the reorganization  
6 of the Department, a study of the reorganization of  
7 the Department.  
8 Q You were acting as a consultant?  
9 A Yes, of a sort.  
10 Q Ms. Garner, what was your employment  
11 position in December 1983?  
12 A I was Insurance Commissioner of the State  
13 of Arkansas.  
14 Q During what time period did you serve as  
15 Insurance Commissioner?  
16 A I'm sorry, I didn't hear that.  
17 Q What time period did you serve as  
18 Insurance Commissioner, from what date until your  
19 termination, beginning to termination?  
20 A Basically the first working day of 1983  
21 until about mid-January, 1985.  
22 Q Were you appointed to that position?

1 A Yes.

2 Q Who appointed you to that position?

3 A Governor Frank White.

4 Q Is there a set term of appointment for an  
5 Insurance Commissioner in Arkansas?

6 A Yes.

7 Q What was the term of office at the time  
8 that you were appointed?

9 A The full term is a four-year term, but I  
10 was filling an unexpired term. A former Commissioner  
11 had resigned and I filled the term.

12 Q So how long was your term for when you  
13 were appointed?

14 A Two years.

15 Q Did you serve the full length of your  
16 term?

17 A Of the remainder of the four year term, I  
18 did, yes.

19 Q So you were not removed from the position  
20 before the end of the term that you were appointed to  
21 serve, is that right?

22 A That's correct.

---

10

1 (Pause.)

2 Q Ms. Garner, turning your attention again  
3 to 1983, were you familiar with a company by the name  
4 of National Investors Life Insurance?

5 A Yes.

6 Q How were you familiar with that firm?

7 A It was an insurance company incorporated  
8 in Arkansas.

9 Q Before the deposition, I faxed to you and  
10 your counsel a copy of a document provided the  
11 Committee. It's a three-page document which bears  
12 the Bates stamps DKS-027455, 027456, and 027457.  
13 The document is a copy of a letter, and I believe the  
14 front of the envelope the letter was sent in, dated  
15 December 14, 1983.

16 MR. FROMEWICK: Michael, at this time, I'd  
17 like to interject at this time, if I may.

18 Ms. Garner, this is Steve Fromewick, the  
19 minority counsel. At this time, I would like to ask  
20 Mr. O'Callaghan if he could state for the record  
21 under what theory this line of questioning falls  
22 under the mandate of Senate Resolution 120.

1 MR. O'CALLAGHAN: I haven't even had a  
2 chance to describe the document, so Ms. Garner is  
3 somewhat at a disadvantage.

4 I'll describe it for the record, then I'll  
5 be happy to give you an explanation. But I think  
6 it's only fair to the witness and counsel.

7 MR. FROMEWICK: You have shown the  
8 document. You stated that she has received the  
9 document.

10 MR. O'CALLAGHAN: I want to describe it  
11 for the record. I just want to describe the date and  
12 who it's addressed to and who sent the document.

13 MR. FROMEWICK: Okay.

14 MR. NATHAN: I have no objection to your  
15 describing the document, Mr. O'Callaghan, but I do  
16 think the record should reflect a couple things about  
17 the document.

18 First, at least as we've previously  
19 advised you, the witness has never seen this document  
20 before you sent it to her today.

21 And to me, secondly, I had previously  
22 requested that if we were going to use this document,

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1 by letter that I sent to a colleague of yours, Mr.  
2 Brenner, that we get an advance copy of the document  
3 stating that we were willing to sign any  
4 confidentiality agreement.

5 Today for the first time, we were faxed  
6 the confidentiality agreement. We have signed it and  
7 we have received it today.

8 But I do want to say that I think it would  
9 be unfair to ask questions of this witness with  
10 respect to a document that she has never seen before  
11 today.

12 MR. O'CALLAGHAN: Counsel, I'm not going  
13 to ask Ms. Garner to authenticate the document in any  
14 way. Most of my questions will be directed towards  
15 issues that are addressed in the document. The  
16 questions will not be based on her knowledge of  
17 actually ever receiving the document, but rather on  
18 issues that are raised in the document.

19 The document is a letter dated  
20 December 14, 1983, addressed to The Honorable Bill  
21 Clinton, Governor of Arkansas. It's signed by Dan R.  
22 Lasater. There's a cc to Maurice Smith, who was a



1 member of the Governor's staff at the time.

2 It deals with --

3 MR. FROMEWICK: At this time, before you  
4 go into the substance of the document, since you've  
5 already described it, the minority would like you to  
6 put on the record your theory as to why anything in  
7 this document falls within the mandate of Senate  
8 Resolution 120.

9 MR. O'CALLAGHAN: A portion of Senate  
10 Resolution 120, Section 1(b)(3), authorizes the  
11 Committee to conduct an investigation, public  
12 hearings into the study of all matters that have any  
13 tendency to reveal the full facts about the bond  
14 underwriting contracts between Arkansas Development  
15 Finance Authority and Lasater & Company.

16 This letter deals with a request by Mr.  
17 Lasater to Mr. Clinton to take an initiative,  
18 strongly suggests that Lasater & Company be included  
19 with First Boston and Stephens & Company as the third  
20 co-manager in the dispersal of securities owned by  
21 Mount Hood Pension Fund, National Investors Life  
22 Insurance, National Investors Pension Fund, with

1 regard to the request of Mr. Lasater in the letter to  
2 intervene on behalf of his company.

3 We are asking, the purpose of the  
4 questioning is to see if Ms. Garner has any knowledge  
5 of any intervention that was taken by the Governor's  
6 office or the Governor on behalf of Lasater & Company  
7 to show a pattern of conduct in which the Governor  
8 intervened on behalf of Lasater & Company to bring  
9 business to the firm of Lasater & Company.

10 That's the basis for the line of  
11 questioning.

12 MR. NATHAN: Mr. O'Callaghan, I didn't  
13 hear, when you read the reference to the Resolution.  
14 I heard about the tendency, but what was the  
15 transaction that you are authorized to investigate  
16 relating to Mr. Lasater?

17 MR. O'CALLAGHAN: Bond underwriting  
18 contracts between the Arkansas Development Authority  
19 and Lasater & Company.

20 MR. NATHAN: Bond underwriting contracts  
21 between Mr. Lasater's firm and what? The Development  
22 Finance Authority?

1 MR. O'CALLAGHAN: The Development Finance  
2 Authority, yes, sir.

3 MR. NATHAN: The record should reflect  
4 that the Arkansas Development Finance Authority is  
5 not, as I recollect, referenced in this letter that  
6 you've faxed to us today.

7 MR. O'CALLAGHAN: Yes, sir. I'll state  
8 that for the record.

9 The reason we're looking at this is to see  
10 if there are other instances where the Governor  
11 intervened on behalf of Lasater & Company to show a  
12 pattern of conduct in which he intervened on behalf  
13 of the company in the work that the company was  
14 involved in in buying and selling securities and  
15 doing bond underwritings.

16 MR. FROMEWICK: At this point, I would  
17 like to object on behalf of the minority. It's the  
18 minority's position that this does not fall within  
19 the scope of Senate Resolution 120. At best, it's  
20 way tangential to what was authorized.

21 However, rather than seeking an opinion  
22 from the Chairman at this time, or requesting of the

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1 witness that she not answer, I will simply state the  
2 objection for the record. And we can continue.

3 MR. O'CALLAGHAN: Thank you.

4 BY MR. O'CALLAGHAN:

5 Q Ms. Garner, I'd like to direct your  
6 attention to the first page of the document where it  
7 reads, the second paragraph, which begins, "we wanted  
8 to follow up with the details of our conversation in  
9 this correspondence with regard to dispersal of the  
10 securities owned by Mount Hood Pension Fund, National  
11 Investors Life Insurance, National Investors Pension  
12 Fund. We've been working hand in hand with your  
13 personnel toward an early sale of holdings and in  
14 fact we handled the first stage of the dispersal in  
15 November when we participated in liquidation of \$30  
16 million of Illinois bonds.

17 Were you familiar with securities of those  
18 three companies being dispersed in December -- excuse  
19 me, in November of 1983?

20 MR. NATHAN: Let me just put an objection  
21 here, counsel.

22 MR. O'CALLAGHAN: Sure.

1 MR. NATHAN: We're going to cooperate with  
2 you, but, number one, I want to join on behalf of the  
3 witness with respect to the objection. I don't see  
4 that you have identified anything that's relevant to  
5 the Resolution, and we want to share in that objection  
6 to the extent that we have standing to do so.

7 Secondly, I really object to the use of  
8 this document in this manner to question the witness.

9 If you want to ask the witness about her  
10 knowledge of National Investors Life and any  
11 dispersal of bonds, you can do so without reading  
12 into the record and questioning of her a document  
13 which was never sent to her and does not appear on  
14 its face to have been written by her, sent to her, or  
15 seen by her before.

16 And you haven't even inquired as to  
17 whether she saw it before you sent it to her today.  
18 And I object to the form of the question.

19 If you have questions, you can put them,  
20 but I don't see any point in putting them with  
21 reference to reading, before the questions,  
22 paragraphs from a document that has no bearing, no

1 relation to her.

2 MR. O'CALLAGHAN: Let me start by asking  
3 Ms. Garner, if you've ever seen the document before.

4 MR. NATHAN: Before you sent it to her  
5 today?

6 MR. O'CALLAGHAN: Yes, sir.

7 THE WITNESS: No.

8 BY MR. O'CALLAGHAN:

9 Q During your term as Insurance Commissioner  
10 in the State of Arkansas, did the Commission have any  
11 role in overseeing the dispersal of securities owned  
12 by either Mount Hood Pension Fund, National Investors  
13 Life Insurance, or National Investors Pension Fund?

14 A Yes.

15 Q What role did the Commission have?

16 A I placed the companies in receivership and  
17 was named receiver during my term.

18 Q When did that occur?

19 A In about June or July 1983.

20 Q With regard to the Commission as receiver  
21 for the companies, did the Commission appoint anyone  
22 to disperse securities of those companies?

1 MR. NATHAN: To disperse securities? Is  
2 that what you're asking?

3 MR. O'CALLAGHAN: To handle the dispersal  
4 of securities.

5 MR. NATHAN: That is not a correct  
6 characterization of events that you described  
7 directly. What was the role with respect to the  
8 portfolio of these insurance companies.

9 THE WITNESS: As receiver of the accounts  
10 of the company was under my purview which included  
11 the administration of the portfolio. I would not  
12 call it a dispersal of the portfolio though.

13 BY MR. O'CALLAGHAN:

14 Q Did the Commission engage any financial  
15 firms to help them with the administration of the  
16 portfolio?

17 A The Commission per se did not.

18 Q Did you?

19 A As receiver, I did.

20 Q Who did you retain?

21 A I retained First Boston and Stephens, Inc.  
22 as joint managers.

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20

1 Q When did that occur?

2 A In about the early part of 1984 when the  
3 Rehabilitation Court approved the matter.

4 Q Had any firms, financial firms been  
5 involved in managing the portfolio before you  
6 retained First Boston and Stephens?

7 A Not to my knowledge in managing the  
8 portfolio, no.

9 Q Are you aware whether a company, Collins,  
10 Locke & Lasater, had any connection with the  
11 portfolio?

12 A Yes.

13 Q What role did they have or connection?

14 A It is my understanding that they were a  
15 broker who, on occasion, worked as a broker to sell a  
16 security to one of the insurance companies or to sell  
17 for one of the insurance companies, if they had a  
18 security to sell, as a broker.

19 MR. FROMEWICK: Could I just ask for a  
20 clarification, Ms. Garner, at this point?

21 Collins, Locke & Lasater were not involved  
22 with the Commission in the portfolio. You're saying



1 that they had some tangential affiliation with one of  
2 the insurance companies?

3 Is this aside from the rehabilitation or  
4 the receivership?

5 THE WITNESS: They had a relationship with  
6 the insurance company prior to the company being  
7 placed in receivership. They did not have a  
8 relationship with me as receiver of the insurance  
9 company.

10 MR. FROMEWICK: Thank you.

11 BY MR. O'CALLAGHAN:

12 Q Was there a specific company that they had  
13 a relationship with?

14 MR. NATHAN: You mean the life insurance  
15 company?

16 MR. O'CALLAGHAN: Yes, sir.

17 THE WITNESS: I believe that they had  
18 acted as a broker for one or all of the Mount Hood  
19 Pension Company, National Investors Life Insurance  
20 Company, and National Investors Pension Insurance  
21 Company.

22 BY MR. O'CALLAGHAN:

1 Q Did they approach you at any time about  
2 becoming a joint administrator of the portfolio after  
3 you became the receiver?

4 Or becoming an administrator of the  
5 portfolio?

6 A Yes.

7 Q Who approached you?

8 A I don't recall who from the firm.

9 Q Are you familiar with anyone at the firm?

10 A I was not before that time. And I don't  
11 remember the name of the person who contacted me.

12 Q Do you remember when you were contacted?

13 A Not specifically.

14 Q Can you narrow it down to a month or time  
15 of year?

16 A It would have been after I put the  
17 companies in receivership in June or July, whatever  
18 the date was, and I would say before the end of the  
19 year 1983.

20 Q And when they approached you, did you have  
21 discussions with a person from Collins, Locke &  
22 Lasater?

1 A Yes.

2 Q What was the substance of those  
3 discussions?

4 A Basically they indicated that they had  
5 been a broker for the insurance company and would  
6 like to continue being a broker for the insurance  
7 company.

8 Q Before I ask you another question about  
9 that, do you recall if the person you spoke with was  
10 a person by the name of Patsy Thomason?

11 A I know her. It wasn't. It was a male.

12 Q Was it somebody by the name of Michael  
13 Drake?

14 A I don't recall.

15 Q Do you recall if it was Dan Lasater?

16 A My recollection is it was not Dan Lasater.

17 MR. FROMEWICK: Did you know Dan Lasater  
18 at the time?

19 MR. NATHAN: Who was that?

20 MR. FROMEWICK: This is Mr. Fromewick.

21 Again, did you know Dan Lasater?

22 THE WITNESS: No, not personally.

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1 BY MR. O'CALLAGHAN:

2 Q After they talked to you about wanting to  
3 be brokers, did you have a reaction?

4 (Pause.)

5 A I don't recall specifically what I told  
6 them.

7 Q Other than stating generally that they  
8 wanted to become involved being a broker, did they  
9 indicate to you that there was any interest in the  
10 Governor's office to having them participate?

11 A Not that I recall.

12 Q Do you recall whether you indicated to  
13 them that you wouldn't consider them as a financial  
14 firm that you would want to hire?

15 A I'm sorry, would you ask that again?

16 Q At the time they approached you, did you  
17 indicate to them that you would not consider them as  
18 a financial firm that you would hire as a receiver?

19 A I don't recall.

20 Q Did you have any other discussions during  
21 that contact, other than what you've just testified  
22 to?

1 A With the Lasater firm?

2 Q Yes, ma'am?

3 A Not that I recall.

4 Q Did you have any subsequent contacts with  
5 them?

6 A Not that I recall.

7 Q Did you have any contacts with anyone in  
8 the Governor's office about the administration of  
9 this portfolio?

10 A Yes.

11 Q Who did you have discussions with?

12 A Governor Clinton.

13 Q How many times did you discuss it with  
14 him?

15 A Once that I recall.

16 Q What was the substance of that discussion?

17 A Basically he expressed concern that an  
18 Arkansas firm that had been handling the business  
19 might be losing the business, and was concerned about  
20 that.

21 Q Was that firm Collins, Locke & Lasater?

22 A Yes.

1 Q Did you have this conversation over the  
2 telephone or face to face?

3 A Over the phone.

4 Q Did he call you?

5 A Yes.

6 Q Did you discuss any other subjects during  
7 the conversation?

8 MR. NATHAN: I didn't hear that question.

9 BY MR. O'CALLAGHAN:

10 Q Were any other subjects discussed during  
11 that conversation other than his concern about an  
12 Arkansas firm losing the business, or Collins, Locke  
13 & Lasater losing the business?

14 A Yes. It was related, but yes.

15 Q What was the substance of that discussion?

16 A He asked me to consider appointing a  
17 broker from E.F. Hutton to select who the portfolio  
18 manager would be.

19 Q Who was the broker at E.F. Hutton?

20 A I don't recall the name.

21 Q What was your reaction to that request?

22 A I didn't feel that that was appropriate

1 and told him so.

2 Q What was his reaction to your telling him  
3 that you didn't think it was appropriate?

4 A I don't recall specifically.

5 Q Do you recall whether he asked you to  
6 appoint the person anyway?

7 A No, I don't.

8 Q Did you eventually appoint the person that  
9 he requested you to appoint?

10 A No, I did not.

11 Q Did you have any other discussions with  
12 him about the appointment of the E.F. Hutton person  
13 to select a broker?

14 A Not that I recall.

15 Q So he didn't subsequently contact you to  
16 express his displeasure that you had not appointed  
17 that person?

18 MR. NATHAN: That question was asked and  
19 answered. She's already said she had no further  
20 contact.

21 MR. O'CALLAGHAN: I just wanted to make  
22 sure that her recollection was completely fleshed

1 out.

2 THE WITNESS: What was the question again?

3 BY MR. O'CALLAGHAN:

4 Q Whether he, at any time, called you again  
5 to express his displeasure that you hadn't appointed  
6 the person from E.F. Hutton to select the broker for  
7 the insurance company business?

8 A Not that I recall.

9 MR. NATHAN: It wasn't to be the broker,  
10 either.

11 MR. O'CALLAGHAN: I'm sorry, to be the  
12 administrator of the portfolio. Is that right?

13 MR. NATHAN: That is not a correct  
14 statement of her testimony, Mr. O'Callaghan.

15 BY MR. O'CALLAGHAN:

16 Q If you could correct me, Ms. Garner, with  
17 regard to what Mr. Clinton asked you to do with the  
18 gentleman from E.F. Hutton and what role he expected  
19 him to play.

20 A That he would make the selection of who  
21 would administer the portfolio for the companies in  
22 receivership.



1 Q Did he mention that the broker from E.F.  
2 Hutton favored hiring Collins, Locke & Lasater to do  
3 that work?

4 A No.

5 Q Going back to the first part of the  
6 conversation, when the Governor expressed concern  
7 that Collins, Locke & Lasater might be losing the  
8 business, did he express to you that he would like to  
9 see them chosen to be the administrator of the  
10 portfolio?

11 (Pause.)

12 A I believe he expressed an interest that  
13 they be included as a manager.

14 Q Did he say, I would like to see them  
15 included as a manager?

16 A I do not remember his specific words.

17 Q Did he refer to the company by name, or  
18 did he refer to it as Dan Lasater's company?

19 A I don't recall.

20 Q Did he discuss Dan Lasater specifically?

21 A What do you mean specifically?

22 Q Did he refer to Mr. Lasater as an

1 individual versus discussing Mr. Lasater's firm in  
2 general?

3 A I don't recall.

4 Q When he expressed to you his interest that  
5 Collins, Locke & Lasater be included, what was your  
6 reaction to that?

7 MR. NATHAN: You mean what did she say?

8 MR. O'CALLAGHAN: Yes, sir.

9 THE WITNESS: I told him that this was a  
10 national matter, that I felt I needed someone who had  
11 experience in asset liability managing, that I needed  
12 an experienced and large capitalized firm, that there  
13 were more policyholders outside the State of  
14 Arkansas. It was a national matter and it was  
15 important that I had a very experienced and well  
16 respected firm handle the matter for me. And that's  
17 what sort of manager I would be looking for.

18 BY MR. O'CALLAGHAN:

19 Q So did you tell him that you didn't think  
20 Collins, Locke & Lasater would be an appropriate firm  
21 to hire for that task?

22 A I told him that I was concerned that they

1 did not have the experience and capitalized stock to  
2 handle something of this magnitude.

3 Q Did he express a response to you after you  
4 told him that?

5 A Basically my recollection is that's when  
6 he asked me about hiring the E.F. Hutton broker to  
7 make the selection of who the manager would be.

8 Q Did you think it was appropriate for him  
9 to suggest that Collins, Locke & Lasater be chosen as  
10 an administrator of the fund?

11 A I did not think it inappropriate that he  
12 discussed the matter with me.

13 Q Were you surprised that he called you up  
14 and suggested Collins, Locke & Lasater be included?

15 MR. FROMEWICK: I'm going to object  
16 because that mischaracterizes her statement.

17 He called her up and discussed a number of  
18 things, of which that was only one.

19 MR. O'CALLAGHAN: I'm talking about that  
20 specific portion of the conversation.

21 MR. NATHAN: What's the question?

22 MR. O'CALLAGHAN: Whether she was

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1 surprised about Governor Clinton's expressing an  
2 interest that Collins, Locke & Lasater be included as  
3 administrator.

4 THE WITNESS: No. Because his thrust was  
5 an Arkansas company losing business and being  
6 involved in continued business. That did not  
7 surprise me.

8 BY MR. O'CALLAGHAN:

9 Q During your tenure, did he call you at any  
10 other time to suggest that financial firms be  
11 retained by the Commission?

12 A Not that I recall.

13 Q During this phone call, did he suggest  
14 that any other Arkansas firms be included as  
15 administrators?

16 A No, not that I recall.

17 Q So the only firm that he referenced was  
18 Collins, Locke & Lasater, is that right?

19 A On the phone call?

20 Q Yes, ma'am.

21 A To do what?

22 Q To be included as administrator for the

1 Mount Hood Pension and National Investors Life  
2 Insurance portfolio?

3 A Yes.

4 Q Was that a yes?

5 A Yes.

6 Q Was Collins, Locke & Lasater ever included  
7 as an administrator for the Mount Hood Pension or the  
8 National Life Insurance portfolio?

9 A No.

10 Q Were you ever contacted by the Governor or  
11 anyone on his staff about Collins, Locke & Lasater  
12 not being included as administrator for the  
13 portfolio?

14 A Not that I recall.

15 Q Was anyone on your staff?

16 A Not to my knowledge.

17 Q Did you discuss this conversation you had  
18 with Governor Clinton with anybody?

19 MR. NATHAN: I assume you mean  
20 contemporaneously and not with her counsel?

21 MR. O'CALLAGHAN: Correct, not with your  
22 counsel.

1 BY MR. O'CALLAGHAN:

2 Q Let's start with contemporaneously. Did  
3 you speak with anyone about this phone conversation?

4 A I don't recall.

5 Q And other than conversations you had with  
6 counsel with respect to this deposition, did you  
7 speak about this phone conversation with anybody at  
8 any time?

9 A I'm sorry, would you repeat the question?

10 Q Certainly.

11 Other than communications you might have  
12 had with counsel in preparation for this deposition,  
13 did you discuss this conversation with anybody at any  
14 time?

15 A Other than in preparation for this  
16 deposition we're on now?

17 Q Yes, ma'am.

18 A Did I discuss what?

19 Q The phone conversation you had with  
20 Governor Clinton with regard to his expressing an  
21 interest in including Collins, Locke & Lasater as  
22 administrator for the portfolio of the Mount Hood

1 Pension Fund, National Investors Life Insurance, and  
2 National Investors Pension Fund?

3 A I think that's what you just asked me and  
4 I said I don't recall if I did or not.

5 Q Do you recall whether you had any  
6 conversations with an individual -- this is just to  
7 help refresh your recollection -- an individual by  
8 the name of Maurice Smith in the Governor's office  
9 about this matter?

10 A Not that I recall.

11 Q Do you know who he is?

12 A Yes.

13 Q Did you have dealings with him while you  
14 were Commissioner?

15 A It is possible but I don't recall anything  
16 specifically.

17 Q Did you have a person who was your point  
18 of contact for you at the Governor's office?

19 A I'm sorry, did I what?

20 Q Did you have a person on the Governor's  
21 staff who was your point of contact in the Governor's  
22 office?

1 A Not that I recall.

2 Q There wasn't a Governor's staff member who  
3 had responsibilities with respect to the Insurance  
4 Commission?

5 A There may have been, but I don't recall  
6 there being such a person.

7 Q Did you have any discussions about this  
8 matter with Betsey Wright?

9 A Not that I recall.

10 Q You know who Ms. Wright is?

11 A Yes, I do.

12 Q She was on the Governor's staff at the  
13 time, is that correct?

14 A I'm sorry? Is what correct?

15 Q Ms. Wright was on the Governor's staff at  
16 the time?

17 A That's my recollection.

18 Q Do you know who Bob Nash is?

19 A Yes.

20 Q Did you have any discussions with Mr. Nash  
21 about this subject?

22 A Not that I recall.



1 Q Ms. Garner, you stated earlier that you  
2 filled your full term of appointment as Insurance  
3 Commissioner, is that correct?

4 A Well, saying full term is a little  
5 misleading. As I pointed out, the full term is a  
6 four-year term. I was appointed to fill an unexpired  
7 term, and I did fill from the time I was appointed  
8 until the end of the term.

9 Q Were you subsequently reappointed?

10 A No.

11 Q What was the reason you left your position  
12 as Insurance Commissioner?

13 A Because I was not reappointed.

14 Q Do you have any knowledge of whether the  
15 reason you were not reappointed had anything to do  
16 with this matter?

17 A No, I don't.

18 Q Had you had an expectation to be  
19 reappointed at the end of your two-year term?

20 (Pause.)

21 A I thought it was probably unlikely.

22 Q Why was that?

1 A Because I had been appointed by one  
2 governor. There was a different governor in office,  
3 and I knew it was likely that he would appoint  
4 someone else.

5 Q Are you aware whether anyone at the  
6 Insurance Commissioner was removed from the  
7 Commission in connection with this matter?

8 MR. NATHAN: In connection with what  
9 matter?

10 MR. O'CALLAGHAN: I'm sorry, it was a poor  
11 question. Let me restate the question.

12 BY MR. O'CALLAGHAN:

13 Q Are you aware whether anyone at the  
14 Insurance Commissioner was either fired or removed  
15 from the Commission because Collins, Locke & Lasater  
16 was not included as an administrator of the portfolio  
17 for Mount Hood Pension Fund, National Investors Life  
18 Insurance, and National Investors Pension Fund?

19 A In what time frame, when I was  
20 Commissioner?

21 Q Any time actually.

22 A I can't speak to when I was not

1 Commissioner. When I was Commissioner, no one was  
2 fired.

3 Q After you were Commissioner, did you ever  
4 hear that anyone was released for the reasons I just  
5 stated?

6 A No.

7 Q While you were Commissioner, who reported  
8 to you?

9 A I'm sorry, when I was Commissioner, what?

10 Q While you were Insurance Commissioner, did  
11 you have anyone that reported to you?

12 A Yes. I had a number of staff people.

13 Q Did you have a deputy?

14 A Yes, I did.

15 Q What was your deputy's name?

16 A Bill Bethea.

17 Q Did you discuss this matter with Mr.  
18 Bethea?

19 A I don't recall.

20 Let me correct one thing. When I first  
21 became Commissioner, I had a different deputy and  
22 that person, at some point, took another job and

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1 left. And Mr. Bethea was the last deputy  
2 commissioner.

3 MR. O'CALLAGHAN: I have no further  
4 questions at this time.

5 EXAMINATION

6 BY MR. FROMEWICK:

7 Q Ms. Garner, Miss or Mrs. Garner?

8 A It's Ms. Garner.

9 Q I just wanted to address you correctly.

10 This is Steve Fromewick. I'm going to try  
11 and be very brief and see if we can get out of here  
12 real soon.

13 The failure of Baldwin and the  
14 receivership of the three insurance companies in  
15 Arkansas, that was a new situation that you had to  
16 address, was it not?

17 A It was what kind?

18 Q It was a crisis in Arkansas, was it not?

19 A Yes.

20 Q Had you ever had a situation before where  
21 you had to help disperse the securities from any  
22 insurance company in Arkansas in much the same way as

1 you had to do for these three companies?

2 A As I have testified earlier, I would not  
3 characterize this as dispersing assets.

4 Yes, I had been receiver of other  
5 companies that were in receivership where, as  
6 receiver, I was administrator of the company, which  
7 included the portfolio.

8 Q Now would I be correct -- let me ask you  
9 this.

10 Were there other companies similar to  
11 Collins, Locke & Lasater that had formerly had  
12 business, brokerage business with these companies,  
13 that no longer had them once you became receiver?

14 A Yes, I believe so.

15 Q Let me just see if we can summarize your  
16 discussion with Governor Clinton.

17 Locke & Lasater --

18 MR. O'CALLAGHAN: Collins, Locke &  
19 Lasater.

20 BY MR. FROMEWICK:

21 Q Collins, Locke & Lasater had business with  
22 the insurance companies and under your receivership,

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1 they were going to lose the business. Is that right?

2 A Yes.

3 Q And they were an Arkansas firm?

4 A Yes.

5 Q And someone from the company called you up  
6 and said we'd like to keep the business and we'd like  
7 to keep it in Arkansas? Is that right?

8 A Basically yes.

9 Q And you decided instead to go with two  
10 other companies, Stephens and First Boston. And the  
11 reason you decided was because of their size and  
12 their assets and their national experience. Is that  
13 right?

14 A And their expertise in this matter,  
15 particularly First Boston.

16 Q You then got a call from the Governor in  
17 which he asked you and inquired whether or not  
18 Collins, Locke & Lasater could keep the business.  
19 And you thought that call was entirely appropriate.

20 Is that right?

21 A In terms of the timing, I believe he  
22 called me before the selection had been made.

1 Q Okay. But after you had spoken to Lasater  
2 and told them they would not be included as a  
3 portfolio manager?

4 A Pardon?

5 Q After you had told Collins, Locke &  
6 Lasater that they would not be included as portfolio  
7 manager?

8 A I don't know if it was after I had said so  
9 or not.

10 Q In any event, you thought the Governor's  
11 call was appropriate?

12 A I believe I testified I didn't think it  
13 was inappropriate.

14 Q And the Governor didn't pressure you in  
15 any way to hire them as portfolio managers, did he,  
16 he merely inquired?

17 A That is correct.

18 Q And you do not recall ever hearing from  
19 the Governor or anyone from his staff concerning that  
20 particular matter after that one call with the  
21 Governor, is that correct?

22 A That's correct.

1 MR. FROMEWICK: I have no further  
2 questions at this time.

3 MR. O'CALLAGHAN: I'm just going to do a  
4 couple of follow ups, Ms. Garner.

5 FURTHER EXAMINATION

6 BY MR. O'CALLAGHAN:

7 Q What was the value of the portfolio for  
8 the three insurance companies pension funds?

9 A The National Investors Company?

10 Q Yes, ma'am.

11 A About \$4.5 billion. I'm sorry, let me  
12 correct that.

13 Q Certainly.

14 A In the Arkansas company, there was about  
15 \$3- to \$3.5 billion. There was a company in Indiana  
16 that had another billion dollars worth that was  
17 included in a joint rehabilitation plan.

18 Q That was all part of the same portfolio,  
19 is that right?

20 A Each company had its own portfolio but it  
21 was all part of the Baldwin-United Group.

22 Q Could you briefly describe, as generally



1 as you can, what caused you to become receiver for  
2 these companies, the circumstances surrounding it?

3 A By law, under Arkansas statute, the  
4 Insurance Commissioner is by law appointed receiver  
5 of a company that is placed into rehabilitation, so  
6 the court appointed me, as Insurance Commissioner, to  
7 be receiver of these companies.

8 Q How did they come to be put into  
9 rehabilitation?

10 A I filed a motion with the court to place  
11 them in rehabilitation.

12 Q What caused you to do that?

13 A I was unsure of whether the companies  
14 could pay the obligations to their policyholders.

15 Q What caused you to think that?

16 A The company had about 20 percent of its  
17 portfolio invested in Baldwin United related  
18 investments. And Baldwin United had other holdings  
19 other than these insurance companies. Baldwin United  
20 had defaulted on a significant loan for a company  
21 that it had acquired. It was unable to restructure  
22 that debt and I was concerned whether the value at

1 which the securities were carried on the insurance  
2 company portfolio could be realized. And in order to  
3 protect the assets of the company and the entries  
4 that were there, I placed the company in  
5 rehabilitation.

6 Q Obviously the court agreed with you  
7 because it put them in rehabilitation, is that  
8 correct?

9 A Yes.

10 Q What court did you file that motion in?

11 A It was in the State Court in Arkansas.  
12 Specifically I don't remember to be able to tell you  
13 the exact court.

14 Q Mr. Fromewick asked you earlier if there  
15 were other Arkansas firms that had been previously  
16 involved in helping to manage those portfolios, is  
17 that correct?

18 A I'm sorry, would you repeat that?

19 Q Mr. Fromewick asked you earlier if there  
20 were other Arkansas firms that had been involved in  
21 administering those portfolios, other than Collins,  
22 Locke & Lasater.

1 MR. NATHAN: There are many mistakes in  
2 your last question, and something ought to be made  
3 clear. This Lasater firm never managed this  
4 portfolio. That is not her testimony.

5 MR. O'CALLAGHAN: I'm sorry, I didn't mean  
6 to mischaracterize.

7 BY MR. O'CALLAGHAN:

8 Q You said they acted as a broker, is that  
9 correct?

10 A Yes.

11 Q Were there other Arkansas firms that acted  
12 as brokers for the companies?

13 A Yes, that is my understanding.

14 Q But when Governor Clinton called you, he  
15 didn't ask you to consider keeping them on, did he?

16 A No, I don't recall him doing so.

17 Q So he didn't call you just to keep the  
18 business in Arkansas, he called you to ask you to  
19 keep the business with Collins, Locke & Lasater, is  
20 that right?

21 MR. NATHAN: She can't testify to what the  
22 purpose was. She testified to what his conversation

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1 was. I think that's sufficient for your purposes.

2 (Pause.)

3 MR. O'CALLAGHAN: I don't have any further  
4 questions at this time.

5 MR. NATHAN: Thank you guys very much.

6 When can we get a copy of the transcript  
7 we can review?

8 MR. FROMEWICK: I have no further  
9 questions either. You jumped the gun but, by all  
10 means, I think we're finished.

11 MR. O'CALLAGHAN: Ms. Garner, thank you  
12 very much. We appreciate your cooperation.

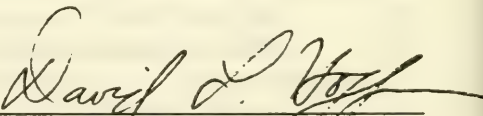
13 (Whereupon, at 6:15 p.m., Wednesday,  
14 June 12, 1996, the taking of the deposition ceased.)  
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16 -----  
17 LINDA GARNER  
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

49

I, DAVID L. HOFFMAN, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
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Notary Public in and for the  
District of Columbia

My Commission Expires JUNE 30, 2000

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## ERRATA

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## ERRATA

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